TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1503 ~~1503~~ 9 3

THE PITTSBURG AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN W. BATES, SHERIFF AND EX OFFICIO TAX COLLECTOR FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 9, 1888.

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a No. 10130.

Supreme Court of the State of Louisiana.

THE PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, &c.

Appeal from the seventeenth judicial district court, parish of East Baton Rouge.

Transcript of record, returnable to the honorable the Supreme Court of the United States on the second Monday of October, A. D. 1888.

1 *Petition.*

To the honorable the seventeenth judicial district court in and for the parish of East Baton Rouge:

The petition of the Pittsburg & Southern Coal Company, a corporation organized and incorporated under and by virtue of the laws of Pennsylvania and domiciled in the city of Pittsburgh, Pennsylvania, and a citizen of said State, and whereof Joseph F. Walton is president, with respects represents—

That your petitioner is now and has been for some time since engaged in the business of buying and selling coal from the mines in Pennsylvania upon the Mississippi river and other navigable rivers of this country.

That it is the owner of a large number of vessels and barges which it has bought with cargoes of coal, and is therewith engaged in trade, commerce, and navigation upon the Mississippi river and other navigable rivers of the United States.

That in the course of the trips and voyages of its said vessels and barges down the Mississippi river it is often convenient, advantageous, or necessary that said vessels should be stopped and moored at different places, posts, or landings on the Mississippi river for different periods of time in the various States of Tennessee, Mississippi, Arkansas, and Louisiana pending the arrangements being made by its officers and agents for the reception and disposition of the cargoes of said vessels.

2 Petitioner represents that during the current year it has sent down the Mississippi river a large number of said vessels, the property of your petitioner, to supply the trade of Louisiana along the Mississippi and its navigable tributaries, which said vessels and cargoes of coal are consigned to O. A. Schneidau, the agent of petitioner in New Orleans, La.

The said agent, O. A. Schneidau, not having yet made the necessary arrangements to receive and dispose of the cargoes of the said vessels at New Orleans or elsewhere, said vessels, about one hundred in number, were stopped and moored in the Mississippi river at a

convenient mooring place about nine miles above the port of Baton Rouge, where they now await the orders of petitioner's said agent, Schneidau, to be thence navigated to such place or places as he may deem convenient or advantageous to petitioner and the trade in which petitioner is engaged, and the said vessels and the said cargoes of coal therein are still the property of petitioner.

Now, petitioner represents that one J. W. Bates, who is the sheriff and *ex officio* tax collector of the parish of East Baton Rouge, has notified your petitioner, through said O. A. Schneidau, its agent, that it is indebted for State taxes for the year 1887 on movable property (as stock on hand) belonging to petitioner, as per the assessment-rolls and State and parish books of 1887, in the sum of ($1,200) twelve hundred dollars, and threatens unless said amount is paid within three days to seize, advertise, and sell movable property of your petitioner sufficient to pay said sum, all of which will more
3 fully and at large appear from said notice, which is annexed hereto and made part hereof, marked "Exhibit A."

Petitioner represents that it is informed and believes and so avers that by the movable property referred to in said notice and designated as "stock in trade" is meant and intended to describe the cargoes of coal on board the vessels of petitioner which are moored in the Mississippi river about nine miles above the city of Baton Rouge.

Petitioner alleges that the said tax claimed by said Bates, sheriff and *ex officio* tax collector of the parish of East Baton Rouge, is not due or owing by your petitioner or by the cargoes of said vessels, and the said pretended assessment and said tax claimed thereunder are illegal, unconstitutional, null, and void for the following reasons, to wit:

First. That the pretended assessment under which said tax was claimed is vague, indefinite, erroneous, informal, not such as is required by the laws of Louisiana, and not sufficient to form the basis of a tax.

Second. That said coal forms the cargoes of vessels owned in Pittsburgh, Pennsylvania, and engaged in trade and commerce between different States, is still upon said vessels upon the navigable waters of the United States, has never been landed in the parish of East Baton Rouge or the State of Louisiana, has never been mixed or commingled with the mass of the movable property in said State, and never ceased to be the property of petitioner.

4 Third. That petitioner is not carrying on any business in the parish of East Baton Rouge, has no agent there, and said coal is not stock in trade on hand, but forms the cargoes of vessels employed in interstate commerce and now lying temporarily off the shore of East Baton Rouge, in the Mississippi river, from whence they will proceed at proper and convenient times to places of final destination.

Fourth. That said tax is in violation of article 1, section 8, clause 3, of the Constitution of the United States.

Fifth. That it is in violation of article "1," section 10, clause 2, of said Constitution.

Sixth. That it is in violation of article 4, section 2, clause 1, of the said Constitution.

Seventh. That it is in violation of article 1, section 9, clause 5, of said Constitution.

Now, petitioner represents that, notwithstanding the illegality, nullity, and unconstitutionality of the said assessment and tax, for the reasons above given and numerous other reasons to be shown on the trial of this cause, said J. W. Bates, sheriff and *ex officio* tax collector of the parish of East Baton Rouge, has threatened and intends and will, unless restrained by an injunction, seize, advertise, and sell the vessels of your petitioner and their said cargoes of coal or some part thereof in order to pay said illegal tax; which said action of said Bates, if permitted, will injure your petition- in
5 a sum exceeding six thousand dollars and cause it irreparable injury.

Wherefore petitioner prays, the premises and annexed bond and affidavit considered, that a writ of injunction do issue herein, directed to J. W. Bates, sheriff and *ex officio* tax collector of the parish of East Baton Rouge, enjoining and restraining him from seizing, advertising, or selling the vessels and coal of your petitioner lying in the Mississippi river and hereinbefore fully described in order to pay any tax of 1887 and from in any manner interfering with said property under the color of enforcing any such tax; that said defendant be cited to answer and served with a copy of this petition, and, after due delays and all proper legal proceedings had, that there be judgment in favor of petitioner and against defendant perpetuating said injunction and declaring said tax illegal, null, and void and ordering its erasure and cancellation from the assessment-rolls and from the books of said tax collector, and petitioner prays for costs and all general and equitable relief in the premises.

By its attorneys:

(Signed) READ & GOODALE,
" W. S. BENEDICT, AND
" H. C. CAGE.

6 STATE OF LOUISIANA, }
Parish of East Baton Rouge. }

Personally came and appeared before me, the undersigned authority, H. C. Cage, to me personally known, who, being duly sworn, deposes and says that he is one of the attorneys of The Pittsburg & Southern Coal Company, plaintiff herein, that said company is domiciled in Pittsburgh, Pa., and its president and secretary are now absent from this State and parish, and that all the facts and allegations in the foregoing petition are true and correct, and a writ of injunction as therein prayed for is necessary to protect the rights of petitioners in the premises; all to the best of his knowledge and belief, so help him God.

(Signed) H. C. CAGE.

Sworn to and subscribed before me this 11th day of October, 1887.

(Signed) W. H. GOODALE,
[SEAL.] *Notary Public.*

Order of Court.

Let the writ issue as prayed, on plaintiff's furnishing bond, with good and solvent security, in the sum of five hundred dollars.

October 11th, 1887.

(Signed) J. W. BURGESS,
Judge 17th Jud'l Dist.

7 *Citation.*

STATE OF LOUISIANA, }
Parish of East Baton Rouge. }

17th Jud'l Dist. Court.

To J. W. Bates, sheriff and tax collector, residing in said parish, Greeting:

You are hereby summoned to appear at the office of the coroner of the parish of East Baton Rouge and comply with the prayer of the annexed petition or file your answer thereto in writing in the office of the clerk of the seventeenth judicial district court for said parish, at the city of Baton Rouge, in ten days after service thereof, allowing yourself one additional day for every ten miles that your residence may be distant from the city.

Witness the Honorable J. W. Burgess, judge of our said court, this twelfth day of October, 1887.

(Signed) CHAS. BERGERON.

THE PITTSBURG — SOUTHERN COAL COMPANY } No. 1162.
vs. }
J. W. BATES, Sheriff, *et als.* } (Original.)

Sheriff's Return.

On the twelfth day of October, A. D. 1887, I received a certified copy of the within citation, with petition annexed, and on the same day, year, and month above written served same on J. W. Bates, sheriff and tax collector, in person, at his office, in the city of Baton Rouge, La.

(Signed) J. B. DUCHEIN, *Coroner.*

8 Petition endorsed:

No. 1162. 17th jud'l dist. court. State of La., East Baton Rouge. The Pittsburg & Southern Coal Company *vs.* J. W. Bates, sh'ff, *et als.* Petition, affidavit, order for injunction. Filed October 11, 1887. (Signed) Chas. Bergeron, d'y clerk. W. S. Benedict, H. C. Cage, Read & Goodale, attorneys.

"EXHIBIT A."

STATE OF LOUISIANA, }
Parish of East Baton Rouge. }

OCTOBER 4, 1887.

Pittsburg & Southern Coal Company, O. A. Schneidau, agent, 45 Carondelet Str. (upstairs), New Orleans, La.:

You are hereby notified that the am't due for State taxes for the year 1887 on movable property (as stock on hand) belonging to said company, as per assessment-rolls, State and parish books of 1887, is ($1,200) twelve hundred dollars. The said amount is past due and unpaid, and that unless said amount is paid in (3) three days from service hereof I will seize said property on which said tax is due, or sufficient part thereof to pay said tax, costs, and penalties attached, and will proceed according to law to advertise and sell said property in satisfaction of said tax, costs, and penalties.

(Signed) J. W. BATES,
Sheriff and ex Officio Tax Collector of the Parish of E. Baton Rouge.

Endorsed: Notice of demand. Copy for O. A. Schneidau, ag't. "Exhibit A." Original.

9 *Injunction Bond.*

STATE OF LOUISIANA, }
Parish of East Baton Rouge. }

Know all men by these presents that we, the Pittsburg & Southern Coal Company, as principal, and Will H. Wood, as security, are held and firmly bound, and hereby bind and obligate ourselves, our heirs and assigns, firmly by these presents to pay unto J. W. Bates, sheriff and *ex officio* tax collector, in the full sum of five hundred dollars, lawful current money of the United States of America.

Dated and signed at Baton Rouge this 11th day of October, A. D. 1887.

The condition of the above obligation is such that whereas the above-bounden Pittsburg & Southern Coal Company has this day sued for and obtained from the Hon. J. W. Burgess, judge in and for the State of Louisiana and parish of East Baton Rouge, a writ of injunction in suit of Pittsburg & Southern Coal Co. *vs.* J. W. Bates, sheriff, *et als.*, No. 1162 of the docket of this said court:

Now, therefore, if the said Pittsburg and Southern Coal Company shall well and truly prosecute *their* said injunction suit to final judgment and pay all such judgments as may be rendered against it for damages and costs in case it be decreed that said writ was

wrongfully issued, then this obligation to be null and void; otherwise to remain in full force and effect.

(Signed) PITTSBURG & SOUTHERN COAL COMPANY,
By H. C. CAGE, *Its Attorney.*
" WILL H. WOOD.

10 Signed in presence of—
H. C. CAGE.
JAS. GEBELIN.

Endorsed: No. 1162. 17th jud. dist. The Pittsburg & Southern Coal Co. *vs.* J. W. Bates, sh'ff, *et al.* Injunction bond. Filed October 11, 1887. (Signed) Wm. Hubbs, clerk.

Writ of Injunction.

17th Judicial Dist. Court, Parish of East Baton Rouge, State of Louisiana.

THE PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

To J. W. Bates, sheriff and *ex officio* tax collector, Greeting:

You are hereby enjoined and restrained from proceeding any further in the seizing, advertising, and selling the vessels and coal of your petitioner lying in the Mississippi river at about nine miles above the city of Baton Rouge, east bank, to pay any tax of the year 1887 and from any manner interfering with said property under the color of enforcing any such tax until the further order of our said 17th judicial district court in the premises.

Witness the Honorable J. W. Burgess, judge of our 17th jud'l district court, this 12th day of October, A. D. 1887.

(Signed) CHAS. BERGERON, *D'y Clerk.*

Endorsed: No. 1162. 17th jud'l dist. court, parish of East Baton Rouge. Writ of injunction. (Original.) Filed October 12th, A. D. 1887. (Signed) Chas. Bergeron, d'y clerk.

11 *Answer.*

17th Jud. Dist. Court, East Baton Rouge.

THE PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, &c. } No. 1162.

In the above entitled and numbered cause now comes J. W. Bates, of aforesaid parish, in his capacity of sheriff and *ex officio* tax collector for the parish of East Baton Rouge, Louisiana, and for answer to plaintiff's petition denies generally each and every of the allegations therein contained, except what may be his interest hereafter to admit.

Appearer admits that in his said capacity as tax collector he caused the demand and notice described in plaintiff's petition, and by them marked "Exhibit A," to be served upon O. A. Schneidan, the agent of plaintiffs, and that it was his intention, unless restrained by order of court, to have seized and sold, as the law directs, a sufficient part of the property of plaintiffs on which the tax claimed in said (?) and sought to be collected was due for 1887 to pay and satisfy the amount, $2,000, of tax due the State for said year, as per assessment-rolls on file in the office of said tax collector.

Appearer avers that said coal is personal taxable property belonging to said Pittsburg & Southern Coal Company as "stock in trade," situated in the parish of East Baton Rouge, and owes the State tax to the State of Louisiana and is legally assessed according to the laws of said State.

12 Wherefore he prays that the injunction sued out be dissolved and dismissed, with costs of suit and with all legal damages in favor of appearer; prays for judgment ordering the seizure and sale of the said property liable to said State tax, to be sold according to the laws of said State, for the payment of the said State tax for the year 1887, to wit, twelve hundred dollars, being six mills tax on the amount of assessment, as well as all interest, costs, and penalties attached thereto by law; prays for all general relief in these premises.

(Signed) L. D. BEALE,
Dist. Att'y, Jud'l Dist.

Endorsed: No. 1162. 17th jud'l dist. court, East Baton Rouge, State of Louisiana. Pittsburg & Southern Coal Company *vs.* J. W. Bates, sheriff. "Answer." Filed November 9, 1887. (Signed) Wm. Hubbs, clerk. (Beale, att'y.)

Minutes of Court, October Term, 1887.

At a session of the honorable the seventeenth judicial district court of the State of Louisiana in and for the parish of East Baton Rouge (being a civil term of said court), begun and holden at the courthouse of said parish, in the city of Baton Rouge, on Monday, the seventeenth day of October, being the third Monday of said month, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: Hon. J. W. Burgess, judge.

13 MONDAY, *November 7th*, 1887.

The court met pursuant to adjournment.

THE PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

The defendants having failed to appear or file an answer, on motion of plaintiff's counsel it was ordered by the court that a judgment by default be entered against the defendants.

WEDNESDAY, *November 9th*, 1887.

The court met pursuant to adjournment.

SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

In this case came defendant, per counsel, and, leave first (?) had, filed an answer, and, on his motion, it was ordered by the court that judgment by default hereinbefore taken be set aside.

THURSDAY, *November 10th*, 1887.

The court met pursuant to adjournment.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

This case was assigned for Saturday, November 19th, 1887.

11 FRIDAY, *November 18th*, 1887.

Court met pursuant to adjournment.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

This case was reassigned for Saturday, November 26th, 1867.

SATURDAY, *November 26th*, 1887.

Court met pursuant to adjournment.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

This case came up regularly for trial, and the evidence — closed and was submitted on briefs to be furnished.

December Term, 1887.

At a session of the honorable the seventeenth judicial district court of the parish of East Baton Rouge, State of Louisiana (being a criminal term of said court), begun and holden at the court-house of said parish, in the city of Baton Rouge, on Monday, the fifth day of December, it being the first Monday of said month, in the year of our Lord one thousand eight hundred and eighty-seven (A. D. 1887).

Present: J. W. Burgess, judge.

WEDNESDAY, *December 29th*, 1887.

The court met pursuant to adjournment.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff, *et al.* } No. 1162.

15 By agreement of counsel this case was assigned for Monday, January 16th, 1888, and also that this case be decided out of term time by brief to be furnished, and that either party who may be cast in the suit be allowed an appeal.

Testimony in Open Court.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sh'ff, *et al.*

SATURDAY, *November 26th*, 1887.

Plaintiff's testimony.

It is admitted that the property on which the demand is herein based is on the Mississippi river, in boats of plaintiff in injunction, which boats are moored to the shore by lines, said boats being known as coal-boats, having no power within themselves of navigation.

Admitted that the said coal is brought down from mines in Pennsylvania, on the navigable streams leading therefrom.

O. A. SCHNEIDAU, sworn, says:

That the tows do tie up at night; that it is a general rule that they tie up at night, but sometimes run at night on moonlight nights. I am the agent of the Pittsburg & Southern Coal
16 Company referred to in this petition. My office is in the city of New Orleans, in this State. I have no other domicil in this State for business, nor has the company. There is no agent of the company in the parish of East Baton Rouge, nor was there any at the time. We sell the coal in the boat on the Mississippi river; we do not otherwise deliver it.

Our company have canal-boats on the Mississippi river at Natchez, Vicksburg, in Mississippi, and also at points in Arkansas and Tennessee.

Question. Is this coal in question taxed or listed for taxes in the sister parishes of this State or in any other State?

Objected to on the ground of incompetency and irrelevancy.

The object of the question being asked, the counsel for plaintiff state—

They expect to prove that this coal in transit between different States is taxed to its owner, the plaintiff, at the domicil in Pittsburgh, Pennsylvania.

The objection is withdrawn

Witness answers—

That it is taxed at Pittsburgh. Some of (?) coal moored at Natchez is sold there and other points below. We sell our coal at different States as we bring it down. Coal can only be brought from Pittsburgh during four or five months of the year. The period varies according to the stage of the river.

17 Parish of East Baton Rouge is not the final destination of the coal stopped here, but some of it is sold here.

The plaintiff sells all the Pittsburgh coal sold in this parish to Wood, Bodley & Co. and Coyle, Wilmot & Co. I know of no other companies selling coal here in this parish.

Cross-examination:

Have been agent for the company since December, 1886. During the whole of that time company kept a fleet of canal-boats up the river in this parish—on an average of about fifty boats—during this year, averaging one hundred or more boats and barges. Barge or boat of coal average about $2,500 to $3,000. Coal sold at different points along the river below here and some in New Orleans. All sold within the State of Louisiana—that is, coal kept on depositary in this parish—we sell upon the water of the Mississippi river only. We sell coal we keep to anybody from our depot in East Baton Rouge in the vessels at the landing. The company keeps coal there since the organization of the company, it being considered a safe landing for the distribution of coal to points below. We have about 140 boats and barges now and same is all for sale.

Received some blank papers from Woodside, assessor, who requested me to fill same. I paid no attention to them, as I considered there was no tax due on it. I simply notified Mr. Benedict about it. I tendered check to tax collector for $120, the company deeming it best to do so than to litigate, am't being small.

18 Sell coal to sugar-planters below from this landing, but in the boats at the landing, company taking no risks. Parties who buy move coal from the landing; coal remains here until buyer removes, company having nothing to do with the transportation of it. So far, we have paid no tax on this coal to the State of Louisiana.

Re-examined, witness says:

This coal is in transit, partially for proceeding below, that which is not sold here. All coal that is not sold here is in transit. When coal reaches here it has not reached its destination, because it is not sold. None is on consignment here for sale.

Recross-examination:

We consider the whole here in transit, except that part sold here; keep coal on deposit here the year round for sale in New Orleans. We make no sale here, but same is sold in New Orleans from just below Memphis all down the river. It is all sold through our office in New Orleans. We deliver to the order to the office and the coal is delivered from this landing. Company's agent at this landing is in possession of this fleet, and his name is Christian Fisher, who is

pumper and head foreman. Orders are delivered to Christian Fisher, who delivers the coal to the purchaser—that is, to take away one or more boats, as the orders call for.

Admitted that Wood, Bodley & Co. and Coyle, Wilmot & Co. are the only coal dealers in Baton Rouge, and that they buy their
19 coal from plaintiff in injunction, and that they pay State taxes on their stock in trade.

Offer sec. "1," act 98 of 1886, approved July 8, 1886, being the revenue act, 1886.

Plaintiff in injunction closes.

Defendants' Testimony.

Admitted that the assessor made the assessment in due form of law, and that the property has been assessed at $200,000.

Offer extract from assessment-rolls, showing the assessment of property for the year 1887.

Admitted that Wood, Bodley & Co. keep the bulk of their stock in coal-boats in the river, but that some is kept on land to supply the trade. We buy coal from the company above referred to. We keep coal at our landing to sell to steamboats and railroads.

Defendants' testimony closed.

November 26th, 1887.

(Signed) CHAS. BERGERON, *Dy Clerk.*

Endorsed: No. 1162. 17th jud'l dist. court, East Baton Rouge. The Pittsburg & Southern Coal Company *vs.* J. W. Bates, sheriff, *et als.* "Testimony in open court." Filed November 26, 1887. (Signed) Chas. Bergeron, d'y clerk.

Extract of Assessment-Roll.

20 17th Jud'l Dist. Court, Parish of East Baton Rouge, State of Louisiana.

PITTSBURG & SOUTHERN COAL COMPANY, O. A. SCHNEIDAN, Ag't,
vs.
J. W. BATES, Sheriff, *et als.* } No. 1162.

One hundred and twenty-six (126) boats and barges of coal adjacent to John A. Wood & Sons' coal fleet and sixty-one (61) boats and barges of coal adjacent to W. G. Coyle & Co.'s coal fleet.

Assessed at	$200,000
State tax at 6 mills	1,200

A true copy from roll of 1887.

(Signed) J. W. BATES, *Sh'ff,*
Per B., *Dy.*

Endorsed: No. 1162. 17th jud'l dist. court. Pittsburg & Southern Coal Co. *vs.* J. W. Bates, sheriff. Filed November 29th, 1887. (Signed) Wm. Hubbs, clerk.

Peremptory Exception.

17th Jud'l Dist. C'rt, East Baton Rouge.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sh'ff. } No. 1162.

In the above entitled and numbered cause now comes defendant Bates and moves your honl. court that the injunction sued out herein be dissolved and plaintiff's suit be dismissed with costs, for this: that plaintiff has no cause of action; there being no seizure made, there is no cause for an injunction.

(Signed) L. D. BEALE, *Dist. Att'y.*

21 Endorsed: No. 1162. 17th jud'l dist. court, East Baton Rouge. Pittsburg & Southern Coal Company *vs.* Bates. "Peremptory exception." Filed November 26th, 1887. (Signed) Wm. Hubbs, clerk.

Judgment.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff & Tax Col.

This case having been tried and submitted to be decided out of term time, and by reason of the law and the evidence being in favor of the defendant, J. W. Bates, sheriff and *ex officio* tax collector, and against the plaintiff, The Pittsburg & Southern Coal Company, and for reasons on file—

It is ordered, adjudged, and decreed that the injunction sued out herein be dissolved and the suit dismissed at plaintiff's costs, and that defendant proceed to collect the tax levied according to law.

Done and signed in chambers January 24th, 1888.

(Signed) J. W. BURGESS,
Judge 17th Judicial District.

Endorsed: No. 1162. Pittsburg & Southern Coal Co. *vs.* Bates, sheriff & tax col. "Judgment."

22 *Reasons for Judgment.*

PITTSBURG AND SOUTHERN COAL CO.
vs.
J. W. BATES, Sh'ff, & *al.* } No. 1162.

The defendant, sheriff and *ex officio* tax collector in the parish of East Baton Rouge, had served notice on plaintiffs to pay a tax of

$1,200 on a number of boats loaded with coal and was about to seize the coal and sell it when the injunction herein was sued out *and* the grounds set forth in the petition. The case was being tried when a "peremptory exception" of no cause of action was filed.

The objections to the tax alleged are—

1st. The assessment is vague and indefinite; not sufficient to form the basis of a tax.

2nd. That the coal forms the cargoes of vessels owned in Pittsburgh, Pennsylvania, and engaged in trade and commerce between different States, is still upon said vessels upon the navigable waters of the United States, never been landed in this parish or the State of Louisiana, never mixed or commingled with the mass of movable property of the State, never ceased to be petitioner's property.

3rd. That petitioner carries on no business in the parish of East Baton Rouge, has no agent there, and the coal is not "stock on hand in trade," but forms the cargoes of vessels employed in interstate commerce and now lying temporarily off the shore of Baton Rouge, on the Mississippi river, whence it will be sent to final destination.

23 4th. That said tax violates art. 1, sec. 8, clause 3, of the Constitution of the United States.

5th. That it is in violation of art. 1, sec. 10, clause 2, of said Constitution.

6th. That it is in violation of art. 4, sec. 2, clause 1, of said Constitution.

7th. That it is in violation of art. 1, sec. 9, clause 5, of said Constitution.

In argument plaintiff contends that under act 98, sec. 1, p. 133, 1886, the coal is excepted from taxation under the clause "goods in transit for forwarding, not on consignment for sale, are not to be assessed."

The answer is a general denial and an averment that the property taxed was personal, was stock in trade, and that the tax was legal.

In the evidence it is admitted that property whereon the demands is taxed is in the Mississippi river in boats of plaintiffs moored to the shore by lines, known as coal-boats, having no power within themselves of navigation; that the said coal is brought from Pennsylvania on the navigable streams leading therefrom.

Mr. O. A. Schneidau, called as witness for plaintiff, says the tows tie up at night, as a general rule, but run sometimes at night by moonlight; *as* the agent of the coal Co., plaintiffs; office is in New Orleans, in this State; no other domicil, nor the company, for business; no agent in the parish of East Baton Rouge, nor was there any at the time. We sell the coal in the boat on the Missis-

24 sippi river; do not otherwise deliver it. Company has coal-boats on Mississippi river at Natchez, Vicksburg, in Mississippi, and also at points in Arkansas and Tennessee. The coal is taxed at Pittsburgh. Sell coal at different States as brought down; sold at Natchez and below there.

Period varies when we can bring coal; four or five months of

year can bring. Parish of East Baton Rouge is not the final destination of the coal stopped here, but some is sold here. Plaintiff sells all the coal in the parish to Wood, Bodley & Co., Coyle, Wilmot & Co.; knows of no other company selling coal here. On X examination Schneidau says, Keep this year (1887) one hundred boats or more. Barges or boats average 82,500 to 83,000. Coal sold at points along the river below here and some in New Orleans, all sold within the State of Louisiana—that is, coal kept on depository in this parish sell upon the water of the Mississippi river only; sell to anybody; the coal in East Baton Rouge in the vessels at the landing; buyer removes the coal; Co. has nothing to do with transportation of it (after sale). Re-ex.: Coal is in transit partially for forwarding below; that which is not sold here.

When coal reaches here it has not reached its destination, because it is not sold; no consignment here for sale. Re-X ex.: Consider the whole here in transit except what is sold here; keep coal on deposit here the year round for sale in New Orleans; sell coal from just below Memphis all down the river; sold through office in New Orleans. We deliver the order to the office and the coal is sent from the landing; company's agent at this landing in possession of the fleet; name is Christian Fisher; orders delivered to him
25 and he delivers to purchasers to take away one or more boatloads as the order calls for.

The coal is taxed at Pittsburgh. Coal dealers here buy from plaintiffs and pay taxes on their stock. Wood, Bodley & Co. and Coyle, Wilmot & Co. are the only coal dealers here, and buy from plaintiff and pay State taxes on the "stock in trade."

Wood, Bodley & Co. keep coal in boats and some on land to sell the trade; sell to steamboats and railroads.

Plaintiff contends that the tax assessed on this coal proposed to be sold to pay the tax violates art. 1, sec. 8, clause 3, of the Constitution of the United States, which provides "that Congress has power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

Also violates art. 1, sec. 10, clause 2: "No State shall, without the consent of Congress, lay any import or duties on imports or exports except what may be absolutely necessary for executing its inspection laws."

Also violates art. 1, sec. 9, clause 5: "No tax or duty shall be laid on any articles exported from any State." No preference shall be given to the port of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

Also that the tax violates art. 4, sec. 2, clause 1: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

26 Two material questions are to be settled in this case:

1st. Are the boats with coal in transit to any other State or port within this State; and,

2nd. Is the property of plaintiff intermingled with the movable

property of the State to justify the levy of the tax under the revenue laws of the State of Louisiana.

The evidence shows that the coal boats or barges loaded with coal are in the waters of the Mississippi and are moored to the bank in the parish of East Baton Rouge; that it is for sale, and is sold and delivered by the boat-load to any one who buys; that the domicil of the company is in New Orleans, and it has no other office for business; that when a sale is made the order is sent to Christian Fisher, foreman at the fleet, and the company have nothing to do with the delivery of the coal further.

The agent, Schneidau, who resides in New Orleans, says "first the coal is partially in transit," and in another place he says "the coal is in transit, except what is sold here." The company sells in New Orleans and the contract or sale are made in New Orleans.

In other words, the stock of coal is kept in the river, tied by lines to the bank in East Baton Rouge; that it is sold and taken, some by dealers in said parish and some to other points in Louisiana by the purchaser. Some, they contend in argument, is exported to other States. The coal is not kept in this parish temporarily by stress of weather or other cause in the ordinary mode of transporting it to a certain other port in or out of the State, because,
27 as the agent or other witness says, it is a safe place to keep it where it is. So, I conclude, the coal, when it is moored to the bank of the river in East Baton Rouge, has reached its intended destination until it is sold. In case of Brown *et al. vs.* J. D. Houston, 33 A., 843, the supreme court held "that where coal is brought from Pennsylvania to New Orleans for sale it can legally be taxed by the State of Louisiana, and the tax thus levied upon it is not obnoxious to any of the three constitutional principles invoked in this case, viz: 1. 'That the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.'

2nd. 'That Congress shall have power to regulate commerce with foreign powers and among the several States.'

3rd. 'And that no State shall levy any import or duties in import- or exports.'"

In that case the coal was mined in Pennsylvania, brought into this State for sale, and was duly assessed as the property of the plaintiff within the territorial limits of the district where defendant was tax collector and where the coal was kept for sale.

In the case now considered, under like circumstances the coal was brought from Pennsylvania, was offered for sale in this parish, was assessed and taxed in the district or parish where defendant resides and collects the State taxes due in said parish. The case in 33 A., 843, was appealed to the Supreme Court of the United States and affirmed.

Both our supreme courts and that of the United States held the terms imports and exports did not apply to property
28 brought or imported from other States of the Union, but solely to import- from foreign countries. In the case quoted by both the State and United States Supreme Court—Woodruff *vs.* Parham, 8 Wallace, 122-'3—it was held and affirmed by the U. S.

Supreme Court that a uniform tax imposed by a State on all sales made in it, whether made by a citizen of such State of (or) another State and whether the property sold was the product of that State or another, was valid.

The court also quotes from Cooly on taxation: "But this provision (the restriction in States to lay import- or duties on imports or exports) has no application to articles transported merely from one State to another." See 114 U. S., 622, Brown *vs.* Houston. "Coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there on account of the owners in Pennsylvania becomes intermingled on arrival there with the general property of the State of Louisiana, and is subject to taxation under general laws of that State, although it may be, after arrival, sold from the vessels on which the transportation was made, and without being landed, and for the purpose of being taken out of the country on a vessel bound to a foreign port."

"Such taxation does no violation either to art. 1, sec. 8, clause 3; art. 1, sec. 10, clause 2, or art. 4, sec. 2, clause 1, of the Constitution."

"The petition states it in so many words, and Roots testifies the same thing, and adds that it was to be sold by the boat-load. He adds also that at time of his examination more than half of it
29 had been exported to foreign countries. * * * They do not hold the coal for exportation, but for sale there. Being in New Orleans and held there for sale without reference to the destination or use the purchaser might wish to make of it, it was taxed in the hands of the owner (or agent), like all other property in the city, six mills on the dollar."

"If after this and after being sold the purchaser thought proper to put it on board a steamer bound to foreign ports did not alter the character of the taxation so as to convert it from a general tax to a duty on exports."

"After referring to the effect whether the tax amounted to a regulation of commerce, of exercise of local administration under the general taxing power, which may incidentally affect the subject of commerce," — says is entirely within the power of the State until Congress "shall see fit to interfere and make express regulations on the subject."

"The tax was not imposed on a foreign product as such, nor a tax because it was brought into Louisiana—a tax while in transit through the State to some other place of destination."

I have quoted from this case, Brown *vs.* Houston, because only that the coal company have their place of business in New Orleans and the coal is kept in the parish of East Baton Rouge. The case now considered and that case are so near identical in principle that the decision in the Brown case should govern the decision in this.

Plaintiff's counsel have furnished brief, and also counsel have referred to Simmons Hardware Co. *vs.* McGuire, 2nd Southern Reporter, page 592, decided at Monroe June, 1887, by the
30 supreme court of this State, where Judge Watkins, as the organ of the court, decreed "that persons passing through the State with the purpose to sell goods therein and owned by merchants of

another State could not be taxed, and the revenue law imposing the license tax of $50 on such persons was unconstitutional." In that case the court held, as all will admit, no property can be taxed until it has become intermingled with the general property of the State, and if in this case, The Coal Co. *vs.* Bates, the property taxed has not been commingled with the general property of the State, no tax can be collected. The offering it for sale while in the hands of the company or its agent in a place where it is kept and not moved, except when sold as in the case of Brown *vs.* Houston, has become mixed with the property of the State and liable to be taxed.

Let judgment be rendered dissolving the injunction and the property enjoined to be sold according to law to pay the tax assessed, plaintiff to pay costs.

Endorsed: "Reasons," No. 1162.

31 *Order of Appeal.*

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff & Tax Collector.

By virtue of the agreement of counsel in this case and of record, and on application of plaintiff's counsel—

It is ordered that an appeal to the supreme court of the State of Louisiana, returnable at New Orleans on the second Monday in February, 1888, be, and is hereby, allowed to the Pittsburg & Southern Coal Company in the alternative, devolutive, or suspensive on furnishing bond and security, if devolutive, in the sum of $100, and if suspensive, according to law.

(Signed) J. W. BURGESS,
Judge 17th Judicial District.

January 24th, 1888.

Appeal Bond.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

Seventeenth Judicial District Court.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff.

Be it known that we, Pittsburg & Southern Coal Co., as principal, and Will H. Wood, as security, are held and firmly bound
32 unto the clerk of the seventeenth judicial district court for the parish of East Baton Rouge and State of Louisiana, his successors in office and assigns, in the sum of eighteen hundred dollars, lawful current money of the United States of America.

Dated and signed at Baton Rouge this 30th day of January, A. D. 1888.

For the payment whereof we bind ourselves as follows, viz:

Whereas the above-bounden principal asked for and obtained an order of appeal from the final judgment rendered against them in the suit of Pittsburg & Southern Coal Company *vs.* J. W. Bates, sheriff and tax collector, No. 1162 of the docket of said court, returnable before the honorable supreme court of the State of Louisiana on or before the second Monday of February, 1888, it being the thirteenth day of said month:

Now, the condition of this obligation is such that if the above-bounden principal shall prosecute their suspensive appeal with effect and shall satisfy whatever judgment, costs, and damages (?) may be rendered against them on appeal or the same shall be satisfied by the proceeds of the sale of their estate if they be cast in the appeal; otherwise the said surety shall be liable in their place.

(Signed) PITTSBURG & SOUTHERN COAL CO.,
Per READ & GOODALE.
" WILL H. WOOD.

In the presence of—
LAUZIN ANNIS.
W. H. GOODALE.

Endorsed: "Appeal bond." Pittsburg & Southern Coal Co. *vs.* J. W. Bates, sh'ff, *et al.* Filed Jan. 30, 1888. (Signed) Wm. Hubbs, clerk.

33 Act No. 98 of 1886.

(Section 1.)

To provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all the property not exempted by the constitution from taxation, and by prescribing the methods of assessing and collecting the same, and of enforcing payment thereof.

SECTION 1. "Be it enacted by the General Assembly of the State of Louisiana, That for the calendar year A. D. one thousand eight hundred and eighty-six, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollars on the assessed valuation of all property situated within the State of Louisiana, except such as expressly exempted from taxation by the constitution, and the term property as herein used, means and includes all real estate, with the buildings and all other improvements thereon or thereto attached, all improvements upon public lands, and all other untaxed lands, every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat of whatever name or description, used or designed to be used either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such vessel, ship or boat, shall be within the jurisdiction

of this State or elsewhere, and whether the same shall
34 have been enrolled, registered or licensed at any collector's office or within any collector's district in this State or not, including all vessels sailing under a foreign flag navigating any of the waters of this State within or bordering thereon, controlled or run, in whole or in part, for the benefit or the person to be assessed, together with their stores or appurtenances, at their fair market value, or belonging to any person, company, association or corporation in or out of this State, and not paying taxes at the domicile of the said company, person, association or corporation: all railroads and other roads, all canals and other ways of communication, travel or transportation; all locomotives, dummies and other motive powers; all engines, boilers and other apparatus, appurtenances, appliances and attachments for steam; electric and other engines; all telephone and telegraph lines; all machines and machinery; all cars, carriages, wagons and other vehicles; all patents, copyrights, trademarks, privileges, charters and franchises, including stock of any lottery charter or privilege, domiciled in or out of this State, unless exempted by the constitution of this State; all lumber, brick and other building materials; all movable property and chattels; all personal property; all goods, wares and merchandise and other stock in trade, in possession, on hand or under control; goods bought and paid for, goods bought and to be paid for, all goods on consignment for sale, without reference to whom they belong; goods in transit for forwarding, not on consignment for sale, are not to be assessed; all alcoholic, vinous and malt liquors; all household, kitchen and other furniture exceeding five hundred dollars
35 ($500) in value; all jewels and jewelry, diamonds, pearls and precious stones, real or imitation; all gold and silverware and silver plate, paintings, engravings, statuary and other works of art, bric-a-brac and articles of virtu and ornaments; all horses and other live animals; all personal property held in trust, or by a wife, or for a minor child; all property held, controlled or administered in each separate capacity as president, cashier, treasurer, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depository, warehouseman, keeper, curator, tutor, executor, administrator, legatee, heir, beneficiary, father, agent, attorney, usufructuary, mandatory, fiduciary or official capacity; the cash value of all judgments, suits and causes in action; all rights, credits, bonds, stocks and securities of all kinds, promissory notes and obligations; all cash on hand on the day upon which the notice is served to make return of taxable property in conformity with this act, including checks payable on that day, and drafts and notes due at that date, which have not been included as money at interest, or debts due; also, all borrowed money or deposits in bank or elsewhere. The amount of cash on hand will not be affected or lessened, because money is owed, or by liabilities of any kind, but must represent the full amount standing in the name of the person to be assessed or subject to his control on the day above mentioned.

All coins, United States and foreign, whether current or uncur-

rent; all currencies, bank notes and other paper money, all moneys loaned at interest, all shares of stock in all banking, insurance,
36 manufacturing and all other incorporated or non-incorporated company chartered under the laws of Louisiana, or under the laws of any other State than Louisiana, an- all other articles and things whatever, possessing any money-d value.

This enumeration shall not be construed so as to exempt from taxation any property or values not enumerated herein: Provided, that no articles or things hereinabove enumerated shall be assessed more than once the same year."

I, William Hubbs, clerk of the seventeenth judicial district court in and for the parish of East Baton Rouge, do hereby certify that the foregoing forty-two pages do contain a full, true, and complete transcript of the record and of all the pleadings and of all the documents filed and of all the testimony and evidence adduced and all the proceedings had on the trial of a case wherein The Pittsburg & Southern Coal Company *are* plaintiffs and J. W. Bates, sheriff and tax collector, was defendant, No. 1162 of the docket of our said court.

Given under my hand and the seal of said court this third day of February, in the year of our Lord one thousand eight hundred and eighty-eight, A. D. 1888.

[SEAL.] (Signed) WM. HUBBS, *Clerk.*

37 *Proceedings in Supreme Court of Louisiana.*

Called and submitted.

Extract from the Minutes of Thursday, February 23rd, 1888.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, Charles E. Fenner, Lynn B. Watkins, associate justices.

PITTSBURG & SOUTHERN COAL CO.
vs.
J. W. BATES, Sheriff. } No. 10130.

This case was called for trial, and by consent of counsel it was ordered submitted on briefs.

38 *Final Decree.*

Extracts from the Minutes of Monday, March 5th, 1888.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, Charles E. Fenner, Lynn B. Watkins, associate justices.

His honor the chief justice announced the opinion and decree of the court in the following case:

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff. } No. 10130.

Judgment affirmed.

39 *Opinion of Court.*

PITTSBURG & SOUTHERN COAL CO.
vs.
J. W. BATES, Sheriff. } No. 10130.

Appeal from the seventeenth judicial district court, parish of East Baton Rouge.

Mr. Chief Justice Bermudez pronounced the opinion and decree of the court in the words and figures following, to wit:

The plaintiff company appeals from a judgment dissolving an injunction obtained by it prohibiting the defendant as an *ex officio* State tax collector from selling a quantity of coal lying in boats at a distance of a few miles from Baton Rouge, on the Mississippi river, to pay taxes alleged to be due the State thereon.

The contention is that the very law under which the sheriff and tax collector presumes to act exempts the coal from taxation as property in transit for transportation and not on consignment for sale.

Act 98 of 1886, p. 133.

It is urged at the same time that any tax on the coal, which is in transit, would violate the Constitution of the United States in several particulars, and reference is made to article 1, section 8, clause 3, to same article, section 10, clause 2, and to article 4, section
40 2, clause 1, and article 1, section 9, clause 5, of that Constitution.

Unnecessary pains have been taken to establish the elementary proposition that goods in transit from one State to another cannot be lawful objects of taxation during their passage in transportation in the State and through the States lying between that of the origin and that of the destination of the goods.

This indisputable doctrine was formally applied by this court in a kindred case—Brown *vs.* Houston, tax collector, 33 A., 843—and further recognized in the recent case of Simmons Hardware Co. *vs.* McGuire, sheriff & tax collector, 39 A., 848.

The defences urged in the present case, as far as the law governing it is concerned, were offered and considered in the Brown-Houston suit, which was carried by writ of error to the United States Supreme Court. After an exhaustive examination of the matters involved that court, in an elaborate, considerate, and well-reasoned opinion, held those defences untenable and affirmed the judgment complained of.

The court found and declared that coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there

for account of the owners in Pennsylvania becomes intermingled on arrival there (N. O.) with the general property in the State of Louisiana and is subject to taxation under the general laws of that State, although it may be after arrival sold on the vessel on which the transportation was made and without being landed and for the purpose of being taken out of the country on a vessel bound to a foreign port.

41 In a subsequent case, alluding to this ruling, the same court, through the same learned organ, held that such goods, having arrived at their place of destination, may be taxed on the State to which they are carried, if taxed in the same manner as other goods, and not by reason of their being brought into the State from another State nor subjected to any unfavorable discrimination.

Koe *vs.* Error, 110 U. S., 527.

A review of the constitutional article involved and of the whole jurisprudence on the subject and mature consideration of the recent ruling just mentioned force upon the mind the irresistible conclusion that by "goods in transit," protected from all State and municipal taxation, is meant goods moving from one State to another, although delayed in transportation, and that such goods become lawful objects of such taxation the moment they reach their destination and are there kept ready or offered for sale at any point within the place of destination.

Such, indeed, is the formal announcement of the Supreme Court of the United States in the Brown-Houston case, in which the following language occurs:

"It cannot be seriously contended, at least in the absence of any congressional legislation to the contrary, that all goods which are the product of other States are to be free from taxation in the States to which they may be carried for use or sale." P. 633.

Looking now into the facts of this case, it appears that the coal in question was sent down the Mississippi river to supply

42 the Louisiana trade, and it reached its destination and was there offered for sale and sold in part.

The facts, if true, that the coal was and is kept on board the flats which carried it, was not unloaded and not consigned, at this or that point, to any specially authorized agent, are immaterial.

It is enough that it was in charge and custody of one or more persons who had the power to sell it and who have disposed of it in part and are ready to do so further.

Judgment affirmed.

Petition for Writ of Error.

In the Honorable the Supreme Court of the State of Louisiana.

PITTSBURG & SOUTHERN COAL COMPANY
vs.
JOHN W. BATES, Sheriff. } No. 10130.

To his honor Edward Bermudez, chief justice of the supreme court of Louisiana:

The petition of the Pittsburg & Southern Coal Company, a corporation created under the laws of the State of Pennsylvania, domiciled in the city of Pittsburgh, in said State, and appearing herein by and through its president, Jos. Walton, a citizen of said State, residing in said city of Pittsburgh therein, with respects represents—

That there is error to its prejudice in the final decree
43 rendered by this honorable court herein; that it is aggrieved thereby, and that the same is in conflict with the rights claimed by plaintiffs under the Constitution and laws of the United States, as detailed and set forth in its original petition herein, which have been decided adversely to the rights and claims of your petitioner, and that your petitioner is desirous of having the decision herein reviewed by the honorable the Supreme Court of the United States.

Wherefore your petitioners prays that an appeal and a writ of error be granted and allowed it in the premises by this honorable court, upon such bond and on such terms and conditions as to this honorable court may seem meet and proper, same to be made returnable in the honorable the Supreme Court of the United States at its next return day in the October term of 1888, with due notice and citation to the defendant herein or any or all other persons herein interested, and it prays for all other orders requisite and necessary in the premises.

(Signed) W. S. BENEDICT,
Of Counsel for Plaintiff.

Order.

Let the prayer of the foregoing petition be granted and let the writ of error be issued and appeal allowed, and that bonds be given therefor in the sum of $250 each, to be approved by the court, writ not to operate as a supersedeas.

New Orleans, April 2nd, 1888.

(Signed) E. BERMUDEZ,
Chief Justice.

44 *Bond for Writ of Error.*

PITTSBURG & SOUTHERN COAL COMPANY
vs.
J. W. BATES, Sheriff. } No. 10130.

Know all men by these presents that we, The Pittsburg & South-

ern Coal Company of Pittsburgh, Pennsylvania, herein represented by O. A. Schneidan, their duly appointed agent, as principal, and Burris D. Wood, as surety, are held and firmly bound unto John W. Bates, sheriff and *ex officio* tax collector of the parish of East Baton Rouge, State of Louisiana, in the full and just sum of two hundred and fifty dollars, to be paid to the said John W. Bates, sheriff and *ex officio* tax collector for the parish of East Baton Rouge, State of Louisiana, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, in the supreme court of the State of Louisiana, holding sessions in and for the State of Louisiana at New Orleans, Louisiana, in a suit depending in said supreme court, wherein The Pittsburg & Southern Coal Company were plaintiffs and John W. Bates, sheriff and *ex officio* tax collector of the parish of East
45 Baton Rouge, was defendant, judgment was rendered against the Pittsburg & Southern Coal Company, a corporation of Pittsburgh, Pennsylvania, defendant; and the said Pittsburg & Southern Coal Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit (?) court to reverse the judgment in the aforesaid suit, and a citation directed to said John W. Bates, sheriff and *ex officio* tax collector for the parish of East Baton Rouge, State of Louisiana, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Pittsburg & Southern Coal Company shall prosecute their writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) PITTSBURG & SOUTHERN COAL CO.,
Per O. A. SCHNEIDAN, *Ag't.* [L. S.]
B. D. WOOD. [L. S.]

Sealed and delivered in the presence of—
(Signed) ELMER E. WOOD.
O. A. SCHNEIDAN, JR.

Bond for Appeal.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Pittsburg & Southern Coal Company of Pittsburgh, Pa., herein represented by
46 O. A. Schneidan, their lawful agent, (?) and Burris D. Wood, as surety, are held and firmly bound, jointly and severally, unto John W. Bates, sheriff and *ex officio* tax collector of the parish of East Baton Rouge, in the sum of two hundred and fifty dollars,

lawful money of the United States of America, to be paid to the said heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 13th day of April, in the year of our Lord 1888.

Whereas the said Pittsburg and Southern Coal Company having heretofore, to wit, on the 2nd day of April, A. D. 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered by the supreme court of the State of Louisiana in the suit of The Pittsburg & Southern Coal Co. *vs.* J. W. Bates, sheriff and *ex officio* tax collector, No. 10130 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Pittsburg and Southern Coal Co. shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) PITTSBURG & SOUTHERN COAL CO., [L. S.]
By O. A. SCHNEIDAN, *Agent.* [L. S.]
B. D. WOOD. [L. S.]

Signed, sealed, and delivered in the presence of—

(Signed) ELMER E. WOOD.
O. A. SCHNEIDAN, JR.

47 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, George W. Dupre, clerk of the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, do hereby certify the foregoing forty-six pages contain a true transcript of the record of the proceedings had in the seventeenth judicial district court for the parish of East Baton Rouge in a certain suit wherein The Pittsburg & Southern Coal Company were plaintiffs and J. W. Bates, sheriff, &c., was defendant, which said record is now on the files of this honorable court under No. 10130; also a true copy of all the proceedings had in this honorable court on appeal taken by said Pittsburg & Southern Coal Company.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this thirtieth day of June, A. D. 1888, and in the 111th year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

GEORGE W. DUPRE, *Clerk.*

48 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupre is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of George W. Dupre to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 30th day of May, A. D. 1888.

Seal Supreme Court of the State of Louisiana.

E. BERMUDEZ,
Chief Justice.

49 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana and the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said — Pittsburg and Southern Coal Company *vs.* J. W. Bates, sheriff and *ex officio* tax collector, before you or some of you being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Pittsburg and Southern Coal Company, a corporation created under the laws of the State of Pennsylvania, domiciled in the city of Pittsburgh, in said State, and appearing herein by and through its president, Joseph Walton, a citizen of said State, residing in said city of Pittsburgh, and J. W. Bates, sheriff and *ex officio* tax collector for the parish of East Baton Rouge, State of Louisiana, and of the State of Louisiana, wherein was drawn in question the validity of a treaty or statue of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution
50 or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Pittsburg and Southern Coal Company, of Pittsburgh, State of Pennsylvania, as by its complaint appears, we, being willing that error,

if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, associate justice of the said Supreme Court, the 13th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Seal U. S. Circuit Court for the Fifth Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—

51 [Endorsed:] No. 10130. Supreme court of the State of Louisiana. Pittsburg & Southern Coal Co. *versus* J. W. Bates, sheriff & *ex officio* tax collector. Writ of error. Supreme court of La. Filed April 10, 1888. Geo. Augustin, deputy clerk.

52 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John W. Bates, sheriff and *ex officio* tax collector for the parish of East Baton Rouge and State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error and appeal filed in the clerk's office of the supeme court of the State of Louisiana, wherein The Pittsburg and Southern Coal Company, a corporation created under the laws of the State of Pennsylvania and a citizen of said State, has been aggrieved by a judgment rendered by the honorable supreme court of the State of Louisiana in the cause entitled Pittsburg and Southern Coal Company *vs.* J. W. Bates, sheriff and *ex officio* tax collector, to show cause, if any there be, why the judgment rendered against the said Pittsburg and Southern Coal Company, as in said writ of error and appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the

Supreme Court of the United States, this — day of ——, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice Supreme Court of the State of Louisiana.

53 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10130. Pittsburg & Southern Coal Company *vs.* J. W. Bates, sh'ff, *et al.* Citation. Supreme court of La. Filed June 25, 1888. Geo. Augustin, deputy clerk.

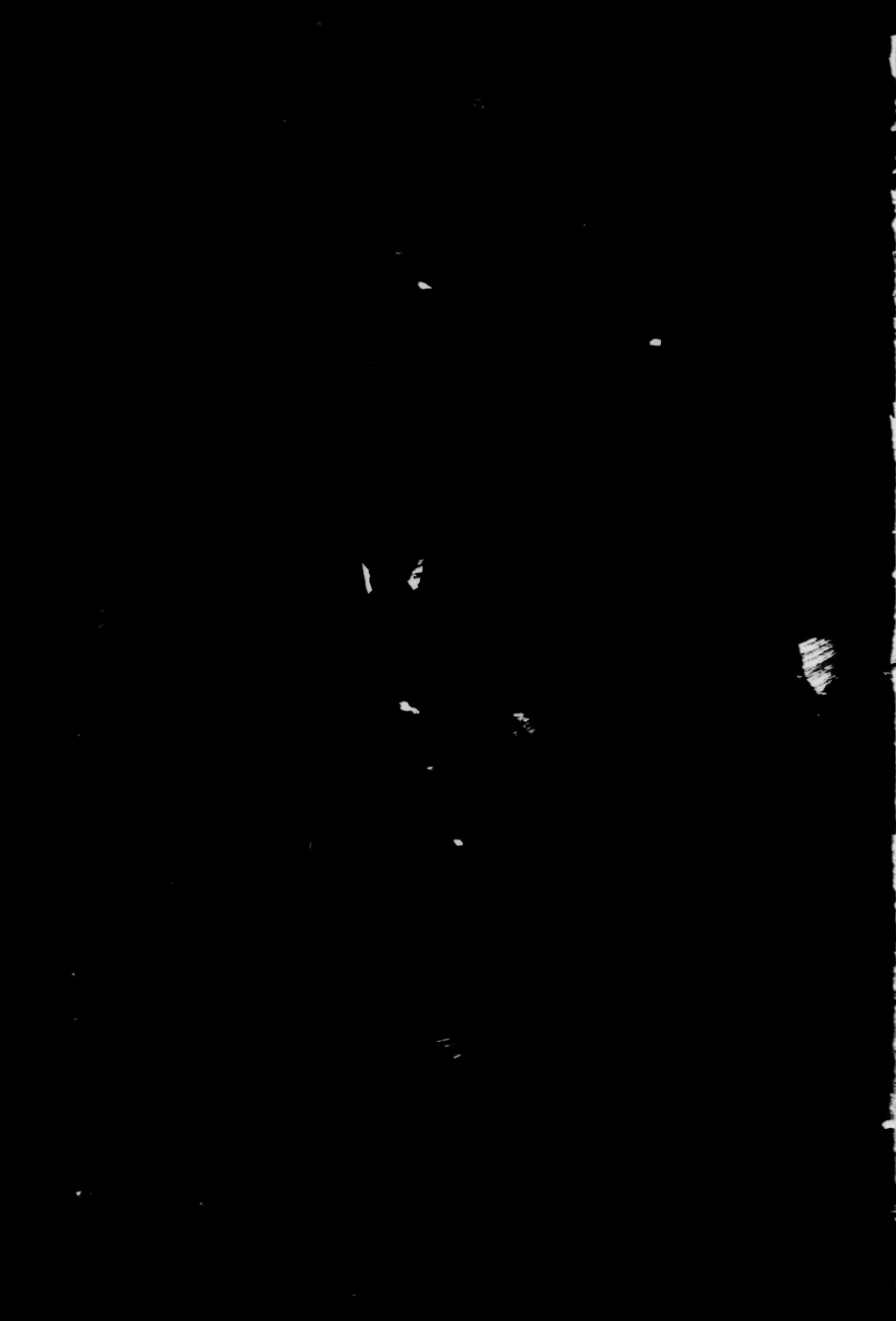
Marshal's Return.

Received the within citation on Friday, June 15th, 1888, and served a certified copy of the same on J. S. Slaughter, sheriff & *ex officio* tax collector of East Baton Rouge, on Monday, June 18th, 1888, by delivering said copy to J. S. Slaughter in person.

R. RIVERS JONES, *Coroner.*

Fees, $2.00.

Endorsed on cover: Louisiana supreme court. No. 196. The Pittsburg and Southern Coal Company, plaintiff in error, *vs.* John W. Bates, sheriff and *ex officio* tax collector for the parish of East Baton Rouge, Louisiana. Filed October 9, 1888.



156-577

Office Supreme Court U. S.
FILED.
SEP 29 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. ~~15~~ 3

THE PITTSBURG AND SOUTHERN COAL COMPANY,
Plaintiff in Error,

v.

JOHN W. BATES, Sheriff and Ex-officio Tax Collector of the Parish of East Baton Rouge, Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES W. HORNOR,
W. S. BENEDICT,
GEORGE A. KING,
Attorneys for Plaintiff in Error.

PRESS OF H. L. McQUEEN, WASHINGTON

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE PITTSBURG AND SOUTHERN COAL COMPANY, Plaintiff in Error, *v.* JOHN W. BATES, Sheriff and *Ex-Officio* Tax Collector of the Parish of East Baton Rouge, Louisiana.	No. 15.

BRIEF FOR PLAINTIFF IN ERROR.

1. Statement of the Case.

The Pittsburg and Southern Coal Company, a corporation of the State of Pennsylvania, filed its petition in the 17th Judicial District Court for the Parish of East Baton Rouge, Louisiana, October 11, 1887, against John W. Bates, sheriff and *ex-officio* tax collector for the Parish of East Baton Rouge, Louisiana, making the following allegations (Record, pp. 1, 2):

"That your petitioner is now and has been for some time since engaged in the business of buying and selling coal from the mines of Pennsylvania upon the Mississippi River and other navigable rivers of this country.

"That it is the owner of a large number of vessels and barges which it has bought with cargoes of coal, and is therewith engaged in trade, commerce, and navigation

upon the Mississippi River and other navigable rivers of the United States.

"That in the course of the trips and voyages of its said vessels and barges down the Mississippi River it is often convenient, advantageous, or necessary that said vessels should be stopped and moored at different places, posts, or landings on the Mississippi River for different periods of time in the various States of Tennessee, Mississippi, Arkansas, and Louisiana, pending the arrangements being made by its officers and agents for the reception and disposition of the cargoes of said vessels.

"Petitioner represents that during the current year it has sent down the Mississippi river a large number of said vessels, the property of your petitioner, to supply the trade of Louisiana along the Mississippi and its navigable tributaries, which said vessels and cargoes of coal are consigned to O. A. Schmeidau, the agent of petitioner in New Orleans, La.

"The said agent, O. A. Schmeidau, not having yet made the necessary arrangements to receive and dispose of the cargoes of the said vessels at New Orleans or elsewhere, said vessels, about one hundred in number, were stopped and moored in the Mississippi river at a convenient mooring place about nine miles above the port of Baton Rouge, where they now await the orders of petitioner's said agent, Schmeidau, to be thence navigated to such place or places as he may deem convenient or advantageous to petitioner and the trade in which petitioner is engaged, and the said vessels and the said cargoes of coal therein are still the property of petitioner.

"Now, petitioner represents that one J. W. Bates, who is the sheriff and *ex-officio* tax collector of the parish of East Baton Rouge, has notified your petitioner through said O. A. Schmeidau, its agent, that it is indebted for State taxes for the year 1887 on movable property (as stock on hand) belonging to petitioner, as per the assessment rolls and State and parish books of 1887, in the sum of ($1,200) twelve hundred dollars, and threatens unless said amount is paid within three days to seize, advertise, and sell movable property of your petitioner sufficient to

pay said sum, all of which will more fully and at large appear from said notice, which is annexed hereto and made part hereof, marked "Exhibit A."

"Petitioner represents that it is informed and believes and so avers that by the movable property referred to in said notice and designated as 'stock in trade' is meant and intended to describe the cargoes of coal on board the vessels of petitioner which are moored in the Mississippi river about nine miles above the city of Baton Rouge."

The plaintiff averred that the tax so claimed and the assessment thereof were illegal, unconstitutional, null, and void, on the following grounds (pp. 2, 3):

"1. That the pretended assessment under which said tax was claimed is vague, indefinite, erroneous, informal, not such as is required by the laws of Louisiana, and not sufficient to form the basis of a tax.

"2. That said coal forms the cargoes of vessels owned in Pittsburg, Pennsylvania, and engaged in trade and commerce between different States, is still upon said vessels upon the navigable waters of the United States, has never been landed in the parish of East Baton Rouge or the State of Louisiana, has never been mixed or commingled with the mass of the movable property in said State, and never ceased to be the property of petitioner.

"3. That petitioner is not carrying on any business in the parish of East Baton Rouge, has no agent there, and said coal is not stock in trade on hand, but forms the cargoes of vessels employed in interstate commerce and now lying temporarily off the shore of East Baton Rouge, in the Mississippi River, from whence they will proceed at proper and convenient times to places of final destination.

"4. That said tax is in violation of Article 1, Section 8, clause 3 of the Constitution of the United States.

"5. That it is in violation of Article 1, Section 10, clause 2 of said Constitution.

"6. That it is in violation of Article 4, Section 2, clause 1 of the said Constitution.

"7. That it is in violation of Article 1, Section 9, clause 5 of said Constitution."

An injunction was therefore asked to restrain the defendant "from seizing, advertising, or selling the vessels or coal of your petitioner lying in the Mississippi River, and hereinbefore fully described, in order to pay any tax of 1887, and from in any manner interfering with said property under the color of enforcing any such tax," and for general relief.

The defendant appeared and admitted that in his capacity as tax collector, he had made the demand and served the notice described in the petition, and that it was his intention to have seized and sold a sufficient part of the property of plaintiffs to pay the amount of tax due the State for the year. The answer further averred, p. 7:

"That said coal is personal taxable property belonging to said Pittsburg & Southern Coal Company as 'Stock in trade,' situated in the parish of East Baton Rouge, and owes the State tax to the State of Louisiana and is legally assessed according to the laws of said State."

The assessment was as follows (p. 11):

"One hundred and twenty-six (126) boats and barges of coal adjacent to John A. Wood & Sons' coal fleet and sixty-one (61) boats and barges of coal adjacent to W. G. Coyle & Co.'s coal fleet, assessed at.....$200,000.

"State tax at 6 mills..... ..... 1,200."

The statute under which this assessment was made will be found on pp. 18–20 of the Record. It levied an annual tax "amounting in the aggregate to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana." Among the property enumerated for taxation are "all goods on consignment for sale, without reference to whom they

belong," but it was also provided that "goods in transit for forwarding, not on consignment for sale, are not to be assessed." It is also provided "that no articles or things hereinabove enumerated shall be assessed more than once the same year."

The case was tried on certain admissions and the testimony of O. A. Schneidau, agent of the Pittsburg and Southern Coal Company, which was in no respect contradicted. The material facts were shown to be as follows:

It was admitted (p. 11) that the assessment had been made in due form of law; that (p. 9) the property in question was on the Mississippi River in the boats of the plaintiff, which boats are moored to the shore by lines, said boats, known as coal boats, having no power within themselves of navigation, and that the said coal is brought down from mines in Pennsylvania on navigable streams leading therefrom.

O. A. Schneidau, the agent, testified (pp. 9–11) that his office is in the city of New Orleans, and that he had no other domicil in the State for business, nor has the company. There is no agent of the company in the parish of East Baton Rouge, nor was there any at the time. The coal is taxed at Pittsburg, Pennsylvania. The coal is sold in different States as brought down. The tows tie up at night, though they some times run on moonlight nights. The parish of East Baton Rouge is not the final destination of the coal, although some of it is sold there. Wood, Bodley & Co. and Coyle, Wilmot & Co., are the only coal dealers in Baton Rouge, and they buy their coal from the plaintiff and pay State taxes on their stock in trade. All the coal sold by the company within the State of Louisiana is sold on the Mississippi River only. The company sells coal to anybody from its depot in East Baton Rouge in the vessels at the landing. The company keeps coal

there since its organization, it being considered a safe landing for the distribution of coal to the points below. They have about 140 boats and barges now, and the same is all for sale. The parties who buy move the coal from the landing. The coal remains there till the buyer removes it, the company having nothing to do with the transportation of it. The coal is in transit, partially for proceeding below. All coal not sold at the Baton Rouge depot is in transit. The coal is all sold through the office of the company in New Orleans. The order is delivered to the office and the coal is delivered from the landing. The company's pumper and head foreman at the landing is in possession of the fleet. The orders are delivered to him and he delivers the coal to the purchaser, that is, to take away one or more boats as the orders call for.

The trial court, January 24, 1888, dismissed the suit, and decreed "that defendant proceed to collect the tax levied according to law" (p. 12).

On appeal this judgment was affirmed by the Supreme Court of Louisiana, March 5, 1888 (p. 21).

In both courts an opinion was delivered (pp. 12, 17, 21, 22).

The case is now here on writ of error.

2. *Assignment of Errors.*

Plaintiff in error hereby assigns the following errors in the rulings and judgment of the Supreme Court of Louisiana:

1. That said court erred in sustaining the assessment and levy of said tax, because the same is in conflict with Article 1, Sec. 8, par. 3 of the Constitution of the United States, wherein it is provided that the Congress shall

have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

2. That said court erred in sustaining the assessment and levy of said tax because the same is in conflict with Article 1, Sec. 10, part 2 of the Constitution of the United States, which provides as follows:

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

3. That said court erred in sustaining the assessment and levy of said tax because the same is in conflict with that portion of the act of Congress entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of said State into the Union on an equal footing with the original States, and for other purposes," approved February 20, 1811, Section 3 of which provides—

"That the river Missi-ippi and the navigable rivers and waters leading into the same or into the Gulf of Mexico, shall be common highways and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost or toll therefor, imposed by the said State." 2 Stat. 642.

4. That said court erred in sustaining the assessment and levy of said tax because the same is in conflict with that part of the act of Congress entitled "An act for the admission of the State of Louisiana into the Union, and

to extend the laws of the United States to the said State," approved April 8, 1812, Sec. 1, which provides—

"That it shall be taken as a condition upon which the said State is incorporated in the Union, that the river Mississippi and the navigable rivers and waters leading into the same and into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State as to the inhabitants of other States and the Territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said State; and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited, shall be considered, deemed and taken, fundamental conditions and terms, upon which the said State is incorporated in the Union."

3. Brief of Argument.

In *Brown* v. *Houston*, 114 U. S. 622, it was held (we quote from the syllabus):

"Coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there on account of the owners in Pennsylvania, becomes intermingled, on arrival there, with the general property in the State of Louisiana, and is subject to taxation under general laws of that State, although it may be, after arrival, sold from the vessel on which the transportation was made, and without being landed, and for the purpose of being taken out of the country on a vessel bound to a foreign port."

The following will be urged as reasons for regarding *Brown* v. *Houston* as inapplicable to control the determination of the present case:

1. Because in this case the coal had not reached New Orleans, the port of destination, but was still on the Mississippi River, 9 miles above Baton Rouge, and in actual course of transit.

2. Because *Brown* v. *Houston* has been in effect overruled by more recent decisions of this court.

As to the first of these grounds it will be observed from the testimony that the company had but one office in the State of Louisiana, and that was situated in the city of New Orleans. In the progress of the coal from Pittsburg down the Ohio and Mississippi Rivers it passed through numerous States, and usually tied up at night. It would be sold at any point in the different States as brought down to any person applying for it. It would hardly be claimed, we think, that the fact that the coal was liable to be sold at any point where it happened to tie up for the night, subjected the whole of it to liability for tax in any or all the half dozen States through which it passed in its course from Pittsburg to New Orleans. If not why should it be subject to tax in the parish of East Baton Rouge almost as soon as it arrived in the State of Louisiana, and before reaching its destination at New Orleans? Surely, on the most liberal view of the taxing power of the State, the power to tax that which is brought in from another State can not begin until the goods have reached their actual destination and place of rest within the State to which brought, even though a portion of them may be liable to be sold in the meantime.

We do not, however, place our main reliance for a reversal of the judgment in this case upon this ground.

Our principal ground for urging a reversal is that *Brown* v. *Houston*, 114 U. S. 622, in which a tax imposed under similar, if not in all respects identical, circumstances was sustained, can no longer be regarded as the law of this Court in the light of more recent decisions, particularly that in *Leisy* v. *Hardin*, 135 U. S. 100. In that case the whole subject of the power and jurisdiction of the States over property brought in from other States in the course

of interstate commerce was examined, and the power of the States in that regard redefined, overruling expressly some and impliedly others of the prior decisions of this court.

In *Brown* v. *Maryland*, 12 Wheat. 419, it was held that a State law requiring an importer to take a license and pay fifty dollars before he should be permitted to sell a package of imported goods, is in conflict with that provision of the Constitution of the United States which prohibits a State from laying any imposts or duties on imports or exports, and also with the clause which declares that Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes. In this great case, which has ever been regarded as one of the very landmarks of interpretation of these clauses of the Constitution, it is held, pp. 441, 442:

"That when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution."

And again, p. 443:

"This state of things is changed if he sells them or otherwise mixes them with the general property of the State, by breaking up his packages, and traveling with them as an itinerant peddler. In the first case, the tax intercepts the import, as an import in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed to the revenue of the State. It

denies to the importer the right of using the privilege which he has purchased from the United States, until he shall have also purchased it from the State. In the last cases, the tax finds the article already incorporated with the mass of property by the act of the importer. He has used the privilege he had purchased, and has himself mixed them up with the common mass, and the law may treat them as it finds them. The same observations apply to plate, or other furniture used by the importer."

And again, with reference to the clause empowering Congress to regulate commerce with foreign nations, among the several States, etc., it was said, pp. 446, 447:

"If this power reaches the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right not only to authorize importation, but to authorize the importer to sell."

And p. 448:

"Any charge on the introduction and incorporation of the articles into and with the mass of property in the country must be hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and principal object of it, is to prescribe the regu-

lar means for accomplishing that introduction and incorporation."

And p. 449:

"It may be proper to add that we suppose the principles laid down in this case to apply equally to importations from a sister State."

In *Almy* v. *California*, 24 How. 169, these principles were applied to a State law which imposed a stamp duty on every bill of lading given for gold or silver in coin or bar, or any other form, transported from any point in the State to any point without the State, because it was in effect a tax upon the gold or silver so transported.

In the opinion of Chief Justice Taney it was said that the case could not be distinguished from *Brown* v. *Maryland*, and the decision was placed on the express ground of the repugnancy of the State statute to the clause of the Constitution that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, etc.

It is true that in the subsequent case of the *State Freight Tax*, 15 Wall. 232, 280, the case was thus commented upon:

"In *Almy* v. *The State of California*, 24 Howard, 169, it was held by this court that a law of the State imposing a tax upon bills of lading for gold or silver transported from that State to any other port or place without the State, was substantially a tax upon the transportation itself, and was, therefore, unconstitutional. True, the decision was rested on the ground that it was a tax upon exports, and subsequently, in *Woodruff* v. *Parham*, 8 Wallace, 123, the court denied the correctness of the reasons given for the decision; but they said at the same time the case was well decided for another reason, viz., that such a tax was a regulation of commerce,—a tax imposed

upon the transportation of goods from one State to another, over the high seas, in conflict with that freedom of transit of goods and persons between one State and another, which is within the rule laid down in *Crandall* v. *Nevada*, 6 Id. 35, and with the authority of Congress to regulate commerce among the States."

In *Low* v. *Austin*, 13 Wall. 29, the case presented was identical with the one now before the court, with the sole exception that there the goods were imported from a foreign country, while here they were brought in from another State. The case there was that of a tax upon certain wines imported from foreign countries, remaining in the original cases unbroken and unsold, in the importer's warehouse in the city of San Francisco. It was urged in support of the tax in that case, as it is by the Supreme Court of Louisiana in the present, that the fact that no discrimination was made between imported goods and those of domestic origin, but that the tax was laid upon the goods simply as a part of the general mass of property within the State, justified it, and exempted it from the condemnation pronounced by *Brown* v. *Maryland* against taxes on imported goods remaining in the original packages. But this position was thus met in the opinion of the court, p. 34:

"The Supreme Court of California appears, from its opinion, to have considered the present case as excepted from the rule laid down in *Brown* v. *The State of Maryland*, because the tax levied is not directly upon imports as such, and consequently the goods imported are not subjected to any burden as a class, but only are included as part of the whole property of its citizens which is subjected equally to an *ad valorem* tax. But the obvious answer to this position is found in the fact, which is, in substance, expressed in the citations made from the opinions of Marshall and Taney, that the goods imported do

not lose their character as imports, and become incorporated into the mass of property of the State, until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition. The question is not as to the extent of the tax, or its equality with respect to taxes on other property, but as to the power of the State to levy any tax. If, at any point of time between the arrival of the goods in port and their breakage from the original cases, or sale by the importer, they become subject to State taxation, the extent and the character of the tax are mere matters of legislative discretion."

Coming down now to the more recent cases of *Brown* v. *Houston*, 114 U. S. 622, and *Leisy* v. *Hardin*, 135 U. S. 100, we have two definitions of the stage at which goods brought from one State into another become subject to the jurisdiction and power of the State into which they are brought,—the time, in other words, at which the goods become so intermingled with the common mass of property in the State as to lose their distinctive character as imports or subjects of interstate commerce.

The former of these cases was decided May 4, 1885; the latter April 28, 1890.

In *Brown* v. *Houston* we are told, with regard to the coal brought in the course of water navigation from Pittsburg, Pa., to New Orleans, La., pp. 632, 633:

"It was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. *It had become a part of the general mass of property in the State*, and as such it was taxed for the current year (1880),

as all other property in the city of New Orleans was taxed."

Accordingly it was held that as the coal was subjected to no discrimination in favor of goods which were the product of Louisiana, or goods which were the property of citizens of Louisiana, and was treated exactly in the same manner as such goods were treated, there was no conflict in the law itself, or the proceedings under it, with the unrestricted freedom of commerce between the States.

But is this definition of the time at which the coal had become a part of the general mass of property in the State sustainable? We submit that in view of the later decision referred to it is not.

In the case referred to, *Leisy* v. *Hardin*, 135 U. S. 100, this court took occasion to redefine this very question of the point of time at which merchandise brought into a State loses its distinctive character as an import or subject of interstate commerce, and becomes mingled with the general mass of property in the State. The true doctrine is now stated to be that declared by Mr. Justice Field in *Bowman* v. *Chicago, &c. Railway Co.*, 125 U. S. 507, in a concurring opinion, but adopted as the doctrine of the court in *Leisy* v. *Hardin*, 135 U. S. 119, that—

"The absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled."

Accordingly it was held that a State statute prohibiting the sale of intoxicating liquors except for certain purposes, and under a license, was, as applied to a sale by the importer and in the original packages or kegs unbroken and unopened of such liquors manufactured in and brought from another State, unconstitutional and void as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States. The decision in *Brown* v. *Maryland* was thus summarized, pp. 110, 111:

"In *Brown* v. *Maryland* (*supra*) the act of the State Legislature drawn in question was held invalid as repugnant to the prohibition of the Constitution upon the States to lay any impost or duty upon imports or exports, and to the clause granting the power to regulate commerce; and it was laid down by the great magistrate who presided over this court for more than a third of a century, that the point of time when the prohibition ceases and the power of the State to tax commences, is *not* the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, *which happens when the original package is no longer such in his hands*; that the distinction is obvious between a tax which intercepts the import as an import on its way to become incorporated with the general mass of property, and a tax which finds the article already incorporated with that mass by the act of the importer; that as to the power to regulate commerce, none of the evils which proceeded from the feebleness of the Federal Government contributed more to the great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress; that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States; that that power was complete in itself, acknowledged no limitations other than

those prescribed by the Constitution, was co-extensive with the subject on which it acts and not to be stopped at the external boundary of a State, but must be capable of entering its interior; that the right to sell any article imported was an inseparable incident to the right to import it; and that the principles expounded in the case applied equally to importations from a sister State. Manifestly this must be so, for the same public policy applied to commerce among the States as to foreign commerce, and not a reason could be assigned for confiding the power over the one which did not conduce to establish the propriety of confiding the power over the other. Story, Constitution, § 1066."

Accordingly it was held that the right of transportation of an article of commerce from one State to another included by necessary implication the right of the consignee to sell it in unbroken packages at the place where the transportation terminates, and the conclusion was reached that (pp. 124, 125)—

"Under our decision in *Bowman* v. *Chicago, &c. Railway Co., supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, *by which act alone it would become mingled in the common mass of property within the State*. Up to that point of time, we hold that in the absence of Congressional permission to do so, the State had no power to interfere by seizure, *or any other action*, in prohibition of importation and sale by the foreign or non-resident importer."

The legislation of Iowa was held to the extent indicated repugnant to the third clause of Section 8 of Article 1 of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the States.

It is not clear, however, that it was not also to some extent based upon the second clause of Section 10 of

Article I, prohibiting the States from laying imposts or duties upon imports or exports. The summary just quoted of the decision in *Brown* v. *Maryland* would seem to be indicative of some such view on the part of the court, and this would seem to be made still clearer by the subsequent case of *In re Rahrer*, 140 U. S. 545, where the liquor brought into the State was repeatedly referred to as "imported," and the person bringing it in as the "importer."

In *Lyng* v. *Michigan*, 135 U. S. 161, decided in immediate sequence to *Leisy* v. *Hardin*, the question was not as to the absolute prohibition of the sale of intoxicating liquors imported from one State into another, but of a license tax for the same, and with reference to that this court said, pp. 166, 167:

"We have repeatedly held that no State has the right to lay a tax on interstate commerce *in any form*, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress. *Leloup* v. *Mobile*, 127 U. S. 640, 648, and cases cited. In *Bowman* v. *Chicago and Northwestern Railway*, 125 U. S. 465, it was decided that a section of the Code of the State of Iowa, forbidding common carriers from bringing intoxicating liquors into the State from any other State or Territory, without first being furnished with a certificate as prescribed, was essentially a regulation of commerce among the States, and not being sanctioned by the authority, express or implied, of Congress was invalid because repugnant to the Constitution of the United States; and in *Leisy* v. *Hardin*, *ante*, 100, the judgment in which has just been announced, that the right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes, by necessary implication, the right of sale in the original

packages at the place where the importation terminates; and that the power can not be conceded to a State to exclude, directly or indirectly, the subjects of interstate commerce, or by the imposition of burdens thereon, to regulate such commerce, without Congressional permission. The same rule that applies to the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products, natural or manufactured, of any State, applies to all commodities in which a right of traffic exists, recognized by the laws of Congress, the decisions of courts, and the usages of the commercial world. It devolves on Congress to indicate such exceptions as in its judgment a wise discretion may demand under particular circumstances."

The tax thus condemned differed only in form from that involved in the present case. There it was a license tax—here a tax on the goods themselves. The form is immaterial—the effect in both cases being to restrict and hamper the perfect freedom of sale of goods brought in from other States.

Not only, however, has there been judicial decision by this court since *Brown* v. *Houston*, materially modifying the views therein expressed as to the time when goods brought in from other States become mingled with the general mass of property in the State, and become there subject to taxation or regulation, but there has been legislation by Congress as well. We refer to the act of August 8, 1890, entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases," 1 Supp. Rev. Stat. U. S. 2d Ed. p. 779. This act provides as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory

be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The fact that this act aims only to make original packages of intoxicating liquors subject to the operation and effect of the laws of the several States into which they may be transported immediately after arrival, only serves to emphasize the general rule that as to all commodities not thus specially placed under the jurisdiction of the State immediately upon arrival, the right of unimpeded transportation into the State and sale therein in the original packages at the place where the transportation terminates, is to continue free and unrestricted.

Certainly not a reason could be assigned which could justify the importation and sale of liquors in the original packages free from State control which would not apply with ten-fold greater force to coal in its original packages.

In the one case, it is a commodity whose unrestricted sale and use are always viewed with apprehension. In the other, an article, not only harmless, but absolutely necessary in every household and factory in the land, and every vessel on the sea.

The implication arising from this legislation of the will of Congress that the transportation of all other commodities than intoxicating liquors into a State, and their sale there in the original packages, shall remain unimpeded by any trammels of State legislation, is rendered far stronger by reference to the fact that an earnest attempt was made in Congress to amend the bill which afterwards became the act of August 8, 1890, so as to make

it include not intoxicating liquors only, but *all merchandise* within its operation.

The bill originated in the Senate, and as passed by that body included only intoxicating liquors. The House amended it so as to apply to all goods whatever imported into any State from any other State, Territory, or foreign nation. Finally, however, the House receded from its amendment, and the bill became a law in the precise form in which it was originally passed by the Senate. (Cong. Rec. 51st Cong. 1st Sess. pt. 8, pp. 7427, 7563; pt. 9, p. 8216.)

Thus Congress deliberately refused to extend the policy of subjecting original packages of all articles of commerce brought from one State into another to State interference or control.

And this action of Congress on the subject is the more significant when it is observed that *Brown* v. *Houston* was frequently referred to in the debate, and it was perfectly understood that *Leisy* v. *Hardin* overruled not only the *License Cases*, which it did in express terms, but also *Brown* v. *Houston*, which was not expressly overruled. One member of the House, after citing the *License Cases* and *Brown* v. *Houston*, said:

"Now no one can reconcile the doctrine in the case quoted in the 5th Howard and that in the 114th United States Reports with the present case." (Cong. Rec. 51st Cong. 1st Sess. pt. 8, p. 7509.)

Our third and fourth assignments of error are based upon those provisions of the acts of Congress of 1811 and 1812 providing for the admission of the State of Louisiana into the Union, which provide that the navigation of the Mississippi River shall remain forever free for all the inhabitants of the States and Territories of the

United States, without any tax, duty, impost, or toll therefor imposed by the State of Louisiana.

Free interstate commerce is under the peculiar guardianship of the Federal Constitution. The free navigation of the Mississippi without any *imposition* of any kind is matter of treaty and act of Congress, and under exclusive National regulation. When Spain taxed coal coming down the Mississippi, or Louisiana, when *de facto* no longer in the Union, successfully barred the free trade of the river, great dissent arose from the West. That public opinion still prevails. One act of Congress unrepealed is quite sufficient to keep the river free from imposition by the States bordering upon it.

If, indeed, it be true that we must wait till "Congress sees fit" to make regulations to get the river free, of which our clients entertain grave doubts and show their want of faith by this expensive suit, before making appearance in the legislative hall, asking for such legislation, we desire to have such an expression of opinion from this Supreme Court as will justify our action in that way. Indeed, we will be bound to exhaust all possible methods in the department of the national judiciary before resorting to Congress. Even now, your honors would have original jurisdiction in the case of Pennsylvania's just complaint against Louisiana. To us it seems unreasonable in view of the beneficent action of the Federal Government thus far upon all the States of the Union, to ascribe to what in our minds was *universal* legislation of a *State annual tax*, the invidious and irritating intention of taxing Pennsylvania coal before its being landed on the soil of Louisiana, and whilst it was still within the admiralty jurisdiction of the Constitution.

When it is said in two acts of Congress that the Mississippi shall be a "common highway and forever free," and

"without any tax, duty, impost, or toll, therefor imposed by the State [of Louisiana], as well to the inhabitants of the said State as to other citizens of the United States," 2 Stat. 642, 703, it would seem that no legislation could be made more clear. Every landing place on the Mississippi River and all its tributaries are free by statute to Federal citizens, for the river is the sea of these citizens. The right claimed by us is not the vain, empty right to bring our coal down the river, but to keep it there a reasonable time without taxation or toll of any kind. We can not be compelled to sell it at a loss whilst it is on the river waiting for a purchaser, unless it become a nuisance. How, then, can Louisiana sell it by forced sale? Our right to bring coal down the river would be without value absolutely, without the right to sell it. How comes it that "the King's gates" have become the gates of Louisiana, and subject to be opened and shut to whom Louisiana pleases? We, the citizens of the United States, are claiming Federal rights,—the right to bring our Pennsylvania coal to any spot on the surface of the Mississippi River, and to sell it there without any imposition whatever.

It would be passing strange if free navigation of any river, *a fortiori* of the longest one on the surface of the planet, did not include the right of sale without imposition. What would the right of free navigation be without the right of sale? We all understand the right to tax as including therein the right to enjoy or destroy. The right of State banks to issue paper money was destroyed by the right of the Nation to tax the issue. *Veazie Bank* v. *Fenno*, 8 Wall. 533. The same power which taxed this coal six mills on the dollar could tax it six cents, and thus utterly close the gates of the Mississippi to the traffic in coal.

The consequence of a ruling adverse to the plaintiff in error in this case would be serious. It would enable the various States through which their coal, or, indeed, any other commodity, passes, if so disposed, to absolutely paralyze interstate commerce in that or any other article.

The coal here was moored in flat boats nine miles above Baton Rouge. Although New Orleans was its ultimate point of destination, yet it was for sale to any person applying therefor at the wharf at which moored. In this respect the landing above Baton Rouge was in no respect different from all the other numerous landings at which the tow tied up at night on its passage from Pittsburg to New Orleans. It was the rule to tie up for the night at any convenient point on the river where the day's journey might be ended. The only exception was on an occasional moonlight night, when the navigation might be continued. When tied up at these wharves the coal was for sale to any applicant. Meanwhile the packages remained unbroken and unopened.

If taxable while lying in the flat boats nine miles above Baton Rouge, there is nothing to prevent any or all of the States of West Virginia, Ohio, Kentucky, Illinois, Missouri, Tennessee, Arkansas, and Mississippi taxing it to its full value as often as it tied up for the night on their banks. To permit such taxation would be to permit the destruction by hostile States of commerce between the States, and effectually impair one of the very purposes which mainly led to the adoption of the Federal Constitution.

The coal had already paid its tax in Pennsylvania, and while, perhaps, a personal tax on the owner of property in respect of the value of his personal estate may not also prevent the State of the situs of the property from imposing another tax in respect of the property there

situated, it is difficult to see how within the same year the same property can have two situses for purposes of taxation, and that, too, when moved from one into the other without any change of its state and condition, and not only without a breakage of the original package, but even before its removal from the original vehicles of transportation.

In *Brown* v. *Houston*, 114 U. S. 633, these questions were put by way of argument:

"Take the city of New York for example. When the assessors of taxes goes his round, must he omit from his list of taxables all goods which have come into the city from the factories of New England and New Jersey, or from the pastures and grain-fields of the West? If he must, what will be left for taxation? And how is he to distinguish between those goods which are taxable and those which are not? With the exception of goods imported from foreign countries, still in the original packages, and goods in transit to some other place, why may he not assess all property alike that may be found in the city, being there for the purpose of remaining there till used or sold, and constituting part of the great mass of its commercial capital — provided always, that the assessment be a general one, and made without discrimination between goods the product of New York, and goods the product of other States?"

Answering these inquiries in the light of *Leisy* v. *Hardin* 135 U. S. 100, and *Lyng* v. *Michigan*, 135 U. S. 161, we should say decidedly that all goods remaining in the original packages in which they have come from other States must be omitted from the list of taxables. And this is particularly true in regard to the goods which are visibly and unmistakably in the original packages, for as to them there can be no difficulty in distinguishing them as still actual subjects of interstate commerce. Coal is

not mined or produced in the State of Louisiana, and when found in boats on the Mississippi River no one could mistake its origin.

Again, the following concession in the opinion in *Brown* v. *Houston*, 114 U. S. 634, clearly seems broad enough to cover the present case:

"We do not mean to say that if a tax-collector should be stationed at every ferry and railroad depot in the city of New York, charged with the duty of collecting a tax on every wagon load, or car load of produce or merchandise brought into the city, that it would not be a regulation of and restraint upon interstate commerce, so far as the tax should be imposed on articles brought from other States. We think it would be, and that it would be an encroachment upon the exclusive powers of Congress."

In the case now before the court, instead of waiting until the coal had reached its port of destination, the tax collectors hasten to meet it almost on its way from the other States through which it had passed, and while still nine miles above Baton Rouge levied the tax upon it. This certainly differs not at all in substance, and indeed hardly in form, from the case supposed in the sentence just cited of a State establishing custom-houses along its borders, with State customs officers ready to pounce upon every wagon load, car load, or boat load of produce brought in from other States, and collecting a tax upon it.

We ask that the judgment be reversed and the cause remanded with instructions to grant the relief prayed for in the plaintiff's petition.

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Attorneys for Plaintiff in Error.

Office Supreme Court, U. S.
DEC 12 1894
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 3.

THE PITTSBURG AND SOUTHERN COAL CO., *Plaintiff in Error.*

versus

J. W. BATES, SHERIFF AND EX OFFICIO TAX COLLECTOR OF THE PARISH OF EAST BATON ROUGE, LOUISIANA, *Defendant in Error.*

ADDITIONAL BRIEF FOR PLAINTIFF IN ERROR.

CHAS. W. HORNOR.
GEO. A. KING.
W. S. BENEDICT.
For Plaintiffs, Appellants.

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ADDITIONAL BRIEF FOR PLAINTIFF IN ERROR.

The record in this case was filed on the 9th of October, 1888, since which time this cause, though frequently fixed for trial, has been continued for adequate cause.

It is our desire to present for consideration additional assignments and views, arising from cases decided prior and subsequent to that of *Brown vs. Houston*, 114 U. S. 622, and wherein, as in our original brief, we have endeavored to show the conclusions therein announced by the court should not be adopted as a basis for their decision of this cause.

In that case, reading from page 632, Mr. Justice Bradley said:

"This being the recognized law (that is the conclusions in the case of *Brown vs. Maryland*, 12 Wheat., p. 419), the question then arises whether the assessment of the tax in question

amounted to an interference with, or restriction upon the free introduction of plaintiff's coal from the State of Pennsylvania into the State of Louisiana, and the free disposal of the same in commerce in the latter State; in other words, whether the tax amounted to a regulation of, or restriction upon commerce among the States, or only to an exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the State until Congress shall see fit to interfere and to make express regulations on the subject."

We now assign for error the following points in addition to those referred to in our original brief—namely:

ADDITIONAL ASSIGNMENT OF ERRORS.

Fifth. The lower court erred in holding, contrary to Louisiana's previous legislation, from its acquisition down to the last of its six constitutions, that Pennsylvania coal coming down the river and moored to its bank in boats and on sale was taxable under the Constitution of that State of 1879.

See Louisiana Constitution of 1879, Articles 202 to 218, inclusive.

Also Articles of the Louisiana Code (of 1870), 452, 455, 665 and 707.

Sixth. That such legislative intent anterior to 1879, construed by its court of last resort as to coal coming down the river for sale, has never been legislatively and intentionally changed, as asserted by the court *a qua*, and it has erred in considering this case under laws not embracing it.

State vs. Kennedy, 19 La. An., pp. 424-427.

Seventh. The police protection of the State is not afforded to justify compensation by taxation, as against a foreign owner on property *in transit* upon navigable waters, whether or not its ultimate destination be within the State, until unladen and mixed with other personal property therein.

In view of the evidence embraced in this record and the conclusions reached in *Brown vs. Houston*, we might ask simply for a reversal of the judgment upon the ground stated in the evidence, Record, p. 10. That the coal is *in transit* and that it has not reached its final destination.

But to do so would leave the main question still undecided, for we seek to show that whether the coal be *in transit* or *not in transit*, it is not subject to taxation whilst on the river, in the absence of any legislation by Congress.

We submit that the question involved is political, constitutional, interstatal and pre-eminently federal and social.

It is this:

Has the State of Louisiana the constitutional and legal right to tax Pennsylvania coal brought down the Mississippi river by its owners on barges and flatboats, for sale by them, before unloading, they having already paid a tax thereon to the State of Pennsylvania?

The theory upon which this tax was sustained by the Supreme Court of the State is exceedingly simple.

Its Legislature authorized and justified an annual tax upon all property brought within its geographical boundaries from the very moment of its admission. This coal is property and hence is taxable by an annual tax.

The question is therefore presented to the Supreme Court of the United States in its simple integrity. We will copy the act of the Legislature of Louisiana, by reason of which the tax was assessed, omitting those portions not applicable.

Act 98, session acts of the General Assembly of the State of Louisiana, session of 1886, *Acts of 1886, p. 133, section 1.*

"That for the calendar year A. D. 1886, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate, to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by the Constitution; and the term property as herein used means and includes all real estate, with the buildings and all other improvements thereon or thereto attached, all improvements upon public lands and all other untaxed lands, every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat of whatever name or description, used or designed to be used, either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such vessel, ship or boat shall be within the jurisdiction of the State or elsewhere, and whether the same shall have been enrolled, registered or licensed at

any collector's office, or within any collector's district in this State or not, including all vessels sailing under a foreign flag navigating any of the waters of this State within or bordering thereon, controlled or run, in whole or in part, for the benefit of the person to be assessed, together with their stores or appurtenances, at their fair market value, or belonging to any person, company, association or corporation in or out of this State, *and not paying taxes at the domicile of the said company, person, association or corporation* * * * All movable property and chattels; all personal property; all goods, wares and merchandise and other stock in trade, in possession, on hand or under control; goods bought and paid for, goods bought and to be paid for, all goods on consignment for sale, without reference to whom they belong; goods in transit for forwarding, not on consignment for sale, are not to be assessed." * * * etc.

In the light of this law of the State, the decision complained of is at variance, for it takes away the rights we contend for as arising under the Federal Constitution. It varies from Act 77 of 1880, construed in *Brown vs. Houston*, page 626.

These goods being admitted to be, under the evidence, "in transit for forwarding," having paid the tax due by them at the domicile of the company, but also on consignment for sale in a different parish, it does seem strange that the views of the legislator in framing this act under which we are called upon to pay this tax to the State of Louisiana should not have been upheld by the Supreme Court of that State. We therefore say that the fifth and sixth grounds averred as additional assignment of errors are well taken, and a reversal should be had of the decree of the lower court.

The question, however, which we have propounded requires consideration in the light of the decisions of your Honors rendered in cases under advisement at the same time as *Brown vs. Houston* in 1884, and decided before and after in that case, and cases that subsequently arose and have since been decided, taking them in order, and referring to the almost unbroken line of conclusions reached, that the expressions made use of on page 632 of *Brown vs. Houston*, 114

U. S., that *a power remains in the State* to incidentally affect subjects of commerce *until Congress shall see fit to interfere* and make express regulations on the subject, which is the root of the decision complained of, have not received any sanction whatever by your Honors, nor since, by the learned justice who delivered the opinion of the court in that case.

What we will seek to controvert are the conclusions of law under the facts presented in this case of *Brown vs. Houston*, 114 U. S. 622, 632, the law being conceded in that case to be that the statute herein complained of can only be justified as a legitimate exercise of the police power of the State; otherwise it is a usurpation of the power vested exclusively in Congress. And it was likewise conceded that the State could no more prohibit or regulate that which is interstate than it can that which is with foreign nations. But the court adopted as its rule for the conclusions it reached in that case, that it was within the power of the State to incidentally affect subjects of commerce, "*until Congress shall see fit to interfere* "*and make express regulations on the subject.*" Basing those conclusions upon the statement that the property had become a part of the general mass of property in the State; that it had arrived at its destination and was put up for sale; that it was at a place for final disposal or use, and was a commodity in the market; the tax was held valid, Mr. Justice Bradley being the organ of the court.

The same honored justice announced the opinion in the case of *Robbins vs. The Shelby Taxing District*, 120 U. S. 489-494, and in speaking of the fundamental principles governing such taxation, therein stated:

"In a word, it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, *except as regulated by Congress*, is so firmly established that it is unnecessary to enlarge further upon the subject."

This necessitates our enquiry into the views of the court under and by virtue of which the conclusions as reached in the case of *Brown vs. Houston*, entirely relied on by the de-

fendant in this action, should be held as not well founded in law, and that same should not be made the basis of a decision in the instant case.

We therefore will ask your Honors' attention to the notes we present relative to all of the cases bearing upon the subject matter; those before the court at the time of *Brown vs. Houston*, and decided before and after, and those arising after its decision. We think they establish the fact that this property had not become part of the general mass of the property of the State; that the use of the river was free; that the police power of the State did not extend its aid to the property, and that the provisions of our fundamental law were violated in the assessment levy and attempted collection of the tax imposed by the State.

We will now review those cases.

On April 15, 1884, another case coming from the same State of Louisiana, *Moran vs. New Orleans*, 112 U. S. 69, was, by consent of counsel, regularly submitted for decision on the interstate commerce article of the Federal Constitution, where the question was: "Does the police power of a State (or a city of the State) justify and authorize a tax upon persons owning and running towboats on the Mississippi in and from the Gulf of Mexico and New Orleans?" The court adjourned May, 1884. But on the 6th November, 1884, early at the next term, the court reversed the judgment of the Supreme Court of Louisiana declaring the tax to be a regulation of commerce among the States, and void absolutely.

The court had just been told "the Mississippi borders several States of the Union, but finally flows through Louisiana, emptying itself into the gulf."

The free navigation of that river is almost as necessary for the existence of the nation as coal is for the existence of that State.

All cases of admiralty or maritime jurisdiction are exclusively within the National judicial power, and the sphere of this jurisdiction, as conferred on the Federal courts by the Constitution, extends wherever ships float and navigation successfully aids commerce, whether internal or external.

Then again after that case was disposed of, to-wit., March 13, 1885, the case of *Gloucester Ferry Company* was argued March 13, 1885, and decided April 13, 1885, reported in 114 U. S. 196. The opinion is quite long, with *ten syllabi* prepared by a master, whether judge or reporter, and judiciously, no matter in which capacity it was done, reduced the possibility of error in the future apparently to a minimum.

Both these decisions, 112 U. S. 69 and 114 Ib. 196, were made by a *unanimous court* by *two different organs*, and both opinions nullified the *State tax* as a *regulation of commerce*.

Both these unanimous decisions were thus submitted to the court *after Brown vs. Houston*, but decided *before* the latter case was disposed of. This disposal was had *on the very last day of October term, 1884*, that is *May 4, 1885*, when a third judge, who had been, as we have seen, a participant in the opinions of these two cited cases, decided *Brown vs. Houston*, and announced another unanimous opinion, and published in the same volume as the "Ferry Company's" case.

These three opinions by the three several judges—Matthews, Field and Bradley—are inconsistent. The first two were carefully and promptly decided, and are correct.

The court in these three cases was composed of Waite, C. J., Justices Miller, Field, Harlan, Woods, Matthews, Gray and Blatchford.

In the conference the deliberation over *Moran's* and the *Ferry Company's case* was brief and decisive; whilst the facts show it was long in *Brown vs. Houston*. Houston representing Louisiana, had made no appearance and had filed no brief.

There was no opponent to Brown before the court No brief, therefore, for the attorney of Brown to refute.

Instead of a brief upon the part of the State court, the Supreme Court of the United States took up the opinion of the Supreme Court of Louisiana, and with it went to the extreme doctrine contended for—that the State's power to tax, by an annual assessment, all property within its limits and at any rate it pleased, was undoubted law. It virtually held that New York had the right to tax by an annual assessment

every bag of potatoes and every bushel of peas that crossed the river from Jersey City to New York City before it was landed there. But it added, as we contend, the plainly false proviso and reservation, until Congress legislated the contrary. This was the law established for *Brown vs. Houston*.

Now what were the principles of law contended for and denied in that opinion, directly or indirectly.

First. The power to regulate commerce among the States, as given by the Federal Constitution to Congress, was for the declared and certain purpose of taking away from the States this very taxation, and the free navigation of the Mississippi river was enacted to carry out this purpose, as well as under the Treaty of the acquisition of Louisiana from France.

That this had been the well settled law in Louisiana from her admission as a State down to the decision of her Supreme Court in the instant case.

Second. That the coal, whilst in the boats and barges on the river, was not within the State of Louisiana as taxable property, and Brown had an acquired right to bring his coal from Pittsburg to Louisiana and *to sell it there*, without any sort of taxation by any statal authority whatever.

And until sold, the coal was always within the Federal jurisdiction.

Third. That the boats containing the coal, although tied to a bank of a navigable stream, having communication with the shore by gang planks, were not deprived of the character of water-borne vessels, occupied in the business of navigation at the time.

Leathers vs. Blessing, 105 U. S., 626.

That the coal had not become a part of the general mass of property in the State, still being subject to transit on navigable waters, and could not be a part of its personal property until unladen and sold.

Fourth. It was also argued that the civil law doctrine of *vendor's privilege for the payment of the price of goods* and the *whole law institute of stoppage in transitu* of goods in their *original packages* were entirely inconsistent with the right of

taxation by the State as here claimed, and that the direct determination of this court in *Brown vs. Maryland*, 12 Wheat. 419 (A. D. 1827), had settled *at once and forever* all the *legal doctrines of this case*, and must not now be overruled.

It must be admitted that, under these obligations, the strain upon the court was very severe.

At the very next term of the court one of the *alcoholic* cases was decided (18th January, 1886); it was argued December, 1884, and hence must have been under discussion at the same time with *Brown vs. Houston*, though decided about seven months afterward.

This whiskey case is *Walling vs. Michigan*, 116 U. S. 446, *Bradley, J. There* the case of *Brown vs. Houston* is relied on for the support of the proposition that under the Federal Constitution, interstate commerce must be perfectly free as long as Congress delays legislating; whilst the very reverse was decided in *Brown vs. Houston*, viz.: that the State may tax absolutely at discretion as long as *Congress delays legislating*.

In other words: *Silence in Congress in one case means Free Trade*; and in the other *obstructed navigation* to the *Mississippi* and all other navigable rivers, with full statal power to tax, to the utter destruction of the property.

Could the deciding judge and associates fail to see this manifest inconsistency?

Just one week after, 25th January, 1886, *Coe vs. Errol*, 116 U. S. 517, was decided by the same judge in a unanimous opinion, or at least without any dissent. The subject matter of the suit was *logs cut in New Hampshire* were *hauled to Errol in that State*, and were there *waiting for transportation* at a convenient opportunity to *Lewiston in Maine*. New Hampshire taxed them *as trees* attached to real estate *before severance*; then as *logs at Errol*. The *court held* that *until* the logs *actually started* for their *destination out of the State, in course of transportation*, or *delivered to a common carrier* for the *pur-*

pose, the logs were *again taxable* in *New Hampshire*. *Brown vs. Houston* was quoted along with *Woodruff vs. Parham*, 8 Wall. 123.

The next case is *Pickard vs. Pullman Car Company*, *117 U. S. 34*; Matthew, J.; *argued* January 26, 1886; *decided* March 1, 1886. A State *(Tennessee)* privilege tax of fifty dollars ($50) on *each sleeping car* of a Kentucky corporation is *said*, when engaged in *transportation of passengers* "into, or out of or across the State," the *fare of the passenger* being shared by the Tennessee Railroad and Car Company. This case is on all fours with *Walling vs. Michigan*. It favors free trade and antagonizes obstructed interstate commerce.

Next came *Wabash R. R. vs. Illinois*, 118 U. S. 557; *argued* April 15, 1886; *decided* October 25, 1886, Miller, J. Here the opinion of the court was in favor of free trade, but the dissent was somewhat heavy, C. J. Waite, Justices Gray and Bradley dissenting, the latter as their organ quoting *Brown vs. Houston* for affirmance—*i. e.*, for *obstructed commerce*. The majority ignore it. But the counsel for the free trade quoted it as an authority in their favor. The decision is, however, one of the "Until-Congress-acts," decisions, and as it is in favor of free trade, it is necessarily embraced in those cases inconsistent with *Brown vs. Houston*.

And then *Robbins vs. Shelby Taxing District*, 120 U. S. 489, *argued* January, 1886; *decided* March 7, 1887, Bradley, J., with Miller, Harlan, Woods, Matthews and Blatchford; C. J. Waite dissenting, with Justices Gray and Field. The decision was in favor of free trade, and *Brown vs. Houston* was twice quoted in the deciding opinion. In the dissenting opinion there was quoted no authority but *Osborne vs. Mobile*, 16 Wall. 481, which was decided by a unanimous court, though subsequently overruled. The point was that a license for transacting an interstate forwarding business was like a license to do a drayage business, and C. J. Chase held it taxable. This was a unanimous opinion in opposition to free trade; but the Robbins' case was directly in favor of free trade.

Here intervenes *Fargo vs. Michigan*, 121 U. S. 230, Miller,

J.; submitted December 9, 1886, and decided April 4, 1887; a unanimous opinion in which *Brown vs. Houston* is not mentioned either in brief or opinion. It is for free trade throughout, and adopts *Brown vs. Maryland*, pure and simple.

Then *Steamship Company vs. Pennsylvania*, 122 U. S. 326, Bradley, J.; *argued* April 7, 1887; *decided* May 27, 1887. The decision is fully in favor of free trade, but takes, we submit, an incorrect and partial view of the doctrine of "original package," the radical, visceral and paramount virtue of *Brown vs. Maryland*, which is quoted by its learned originator in the unanimous opinion of the court. "The right *to bring down and sell*" seems to be adopted as fully as in *Brown vs. Maryland*. See also on this 123 U. S. 675; Field, J., concurring, in *Mugler vs. Kansas*.

Next comes *Bowman vs. R. R.*, 125 U. S. 465, Matthews, J., with Miller, Bradley, Field and Blatchford; Justice Harlan, with C. J. Waite and Gray dissenting; argued January 10, 1887; decided March 19, 1888. The decision was coeval with that of the Telephone cases, and it was the last day the chief justice presided over the court. It was a free trade opinion by one who had uniformly decided in this way, and who actually quoted *Brown vs. Houston* as an authority for it, and he had done this in his opinions above quoted The dissent was decidedly in favor of obstructed commerce.

A unanimous opinion distinguishes the next case of *Leloup vs. Mobile*, 127 U. S. 640; opinion by *Bradley, J.*; submitted May 2, and decided May 14, 1888. But what means this appended entry? "No appearance for defendant in error?" For it is found also in *Brown vs. Houston*, in a little different shape, "no argument or brief for defendant in error."

This is very plain. The State, officially through its attorney general, as in this case, says to the court: "This writ of error is taken with the object of delay, and if wrong in this, it is too frivolous for argument; and if still in error, we invoke the *stare decisis and res judicata* principles, which, though now sadly mixed, are jointly and severally conclusive."

Whatever tends to cloud the reason or close the door against human judgment must be deleterious.

The case just quoted was directly in favor of free trade and against State taxation, and the organ of the court, the voice of *Brown vs. Houston*. And note what the Supreme Court of Alabama said in this very case: "In the light of the many adjudications on the subject the ablest jurists will admit that the line which separates the power from its abuse is sometimes very difficult to trace. No possible good could come of any attempt to collate, explain and harmonize them. We will not attempt it. We confess ourselves unable to draw a distinction between this case and the principle involved in *Osborne vs. Mobile*, 16 Wall. 479."

Lelonp vs. Port of Mobile, 127 U. S. 644.

Fourteen cases in this Honorable Court were quoted in the opinion. Of these, beginning with *Brown vs. Maryland*, 12 Wheat. 419, thirteen were in favor of free trade; against it, one—*Brown vs. Houston*. C. J. Chase and an undivided court in *Osborne vs. Mobile* were somewhat summarily disposed of and the case declared an error and no authority—a nullity from the beginning.

We proceed now to 135 U. S. 110, 120, 147, 151, *Leisy vs. Hardin*, where our case is quoted four times to *Brown vs. Maryland's* six. It is one of a class of cases in this court become *sui generis* on account of its superlatively interesting subject matter, now known as *intoxicant cases* to distinguish them from *coal* and other *absolutely necessary* articles of *human existence* embraced in the singular of the great trichotomy, agriculture, manufactures and commerce, about which the framers of the Constitution and the citizens of the United States, the framers of the fifteen amendments, never deemed it worth while to legislate, though Congress, differing in opinion, has undertaken this impossible task recently, in consequence of the decision in this case, which was directly in favor of free trade "among the States."

Citizen Leisy, of Illinois, brought replevin to recover beer in quarter and eighth barrels and sealed cases against Constable Hardin, of Keokuk, Iowa, who had seized the same in a suit by Iowa against the Leisys for violation of certain Iowa laws. This replevin suit resulted in favor of the Leisys in

the Superior Court, but on appeal the judgment was reversed by the Supreme Court of Iowa, when the Leisys brought up the case on error to this court.

The syllabus is short, clear, exact, and reads: "A statute of a State prohibiting the sale of any intoxicating liquors, except for (certain specified purposes), and under a license from a county court of the State, is, as applied to a sale by the importer, and in the original packages or kegs, unopened and unbroken, of such liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the clause of the constitution granting to Congress the power to regulate commerce with foreign nations and among the several States."

The first case quoted and relied on as conclusive, is *Brown vs. Maryland, 12 Wheat. 419* (*1827*), and its associate case, *Gibbons vs. Ogden, 9 Wheat. 1* (*1824*). The first being the *case of Foreign Commerce;* the second, of *Domestic* or *Interstate Commerce;* the first being the question of *Obstructed Commerce for Revenue*, the *second* of *absolute Free Trade between the States; and both concurring* in the power of Congress to make all *foreign commerce absolutely free*, when it so pleases, and "*regulate*," in the strictest sense of that word, *Interstate Commerce*.

The fate of the two decisions is somewhat remarkable.

Gibbons vs. Ogden was recognized at once, and never doubted and soon hardened into law. Whilst *Brown vs. Maryland*, on account of the enunciation of an important and most indubitable truth, grossly stigmatized by those who, disciples of authority and the enemies of reason and understanding, would impose upon the science of law the locks and chains of a *stare decisis* principle.

It is now sought to emasculate this decision by the term *obiter*. In this case the court was enunciating the reasons and giving its conclusions on a suit involving foreign commerce and the leading principles governing it. And then added, *obiter* as it is said, and to deprive it of all reasonableness, the following: "*We suppose the principles laid down in this case apply equally to importations from a sister State.*"

Every decided case of obstructed interstate commerce since the decision in *Brown vs. Houston*, and including it, has been in direct violation of this truth. But pre-eminently so in this case. Men are still living who heard the eminent legist read his opinion sustaining the police power of the State against the commerce clause of the Federal Constitution, when, at the close of a long judicial life, he dictated his dissent to all the doctrines he had penned in this case, which your Honors are asked to forever annul. Let us now look at the principles of *Brown vs. Maryland*.

C. J. Marshall first defines the meaning of the term "imports" in the Constitution, as "things imported—the articles themselves that are brought into the country."

Brown vs. Houston declares expressly, that in Louisiana coal can neither be an export nor an import under the Federal Constitution. It fails to explain how this indispensable article to the citizens of Louisiana reaches its territory.

There's not even an atom of incipient coal found there, and of course no actual coal. It is not supposed to come down there from above. If it gets there by any other mode than importation, we submit, the fact should be made known.

The attempted distinction between foreign and interstate commerce as to imports and exports, in violation of *Brown vs. Maryland*, passed away, after a comparatively short life.

It played a prominent part in *Brown vs. Houston* and the instant case in both the original and appellate courts of Louisiana. There never was any reasonable foundation for it in the Federal tax laws in time of war. But the decisions of the Supreme Court of Louisiana in both *Brown vs. Houston* and the instant case seem to be based mainly upon it. But it is said by this court in cases of writs of error to State courts presenting a Federal question, to-wit, the validity of a State tax law, the judgment below is conclusive as in accordance with the laws of Louisiana, *dura est lex, sed lex*.

It is well known that when a State law is plainly intended to violate a constitutional principle of our federation it almost always assumes the shape of a tax. When it is plain on the very face of the record that this intention exists, this presumption of consistency and accordance ceases at once.

In the instant case the court takes judicial notice of the navigation of the Mississippi river, historical facts pertaining to Louisiana and the purchase thereof, and how far by the incorporation into the Federal Union the rights of citizens of other States were affected. And the very first question arising in this case is: Had the appellants, as citizens of Pennsylvania, the right to the free navigation of the river Mississippi; to moor their boats to the bank of the river; to keep the cargoes there on board for a reasonable time for sale, without any tax, toll, impost, or obstruction whatever?

We submit that if the plain words of the Louisiana Constitution and laws on taxation had the intent in view to destroy or impair this right, and your Honors can see it clearly, the decision below is erroneous, and the judgment below must be reversed; and if it had not this intent in view, still it is equally outside of the limits and sphere of State taxation.

We must not urge upon your Honors the theory that the citizens of Louisiana can tax the citizens of Pennsylvania in any case whatever to pay taxes to supply soldiers wounded in the last war with artificial limbs, for that would be inhuman; but if this coal was not intended to be taxed by the legislators, or to come within the purview of the State legislation, both by Constitution and statute, no matter how the judiciary of the State may have decided, still the coal in this case can not be taxed.

It is clear that the coal was brought into Louisiana from Pennsylvania for the purpose of being sold. As long as this end and aim existed in the coal company, no intention of keeping the coal unsold can be imputed to the importers.

Rapidity of intercourse, quick sales and short accounts are the ineradicable characteristics of commerce. As long as interstate commerce is free, these imports can not be taxed in the hands of the alien importers. They are not within the State.

They are within the Federal jurisdiction. No State can go into Federal warehouses to levy taxes on imported goods in their original packages, no matter who may be the owners, as long as the original condition of their being for sale remains

impressed upon them. As long as the coffee remains in its bags, "the silks in the bales," and the merchant stands ready and desirous of selling when he can get his price, the State police power is inoperative. *Mobilia sequantur personam.*

Besides, the coal in this case was brought to Louisiana by invitation of a very long standing. *La. Code, Art. 455*, reads: "The use of the banks of navigable rivers or streams is public; accordingly every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets and the like. Nevertheless, the ownership of the river banks belongs to those who possess the adjacent lands."

In the light of this article, guaranteed by the Federal Union and absorption of Louisiana as a State in an indissoluble Union, the hint of intervention of the State's police power seems out of place.

Besides, the tax assessed and levied is an *annual* tax. This clearly means a tax for an entire year's police service; for this citizens of Louisiana get twelve month's worth of it. *Brown* in *Houston's* case got less than a single month. The ratio is as 12 to 1 in favor of Louisiana citizens. This view suggests an illegal discrimination.

We restrict ourselves to the investigation of this one point: Is this coal, situated as we have described it, located there in the river in boats tied to its banks, under the undisputed and undisputable laws of the State, within and under the taxing powers of the State? In other words, has Louisiana any power over or business with the coal of the plaintiffs in error, citizens of Pennsylvania, and now in the control of the sheriff of the parish of East Baton Rouge? The case is admitted to be so like *Brown vs. Houston*, that if the likeness of the facts were alone considered, and there were no contention over the principles of law applicable to these facts, the court might apply the favored doctrine of *stare decisis*.

But perhaps unfortunately for this simple view of the case, which, if adopted, would involve little labor and less argument, we now submit that *Brown vs. Houston* is radically inconsistent with at least one case decided before it in 1827 and

several cases since. This previously decided case is *Brown vs. Maryland*, on which Brown relied for success. That contention is here renewed. It may be defined now as then, the Federal right to bring the coal to the banks of the Mississippi river from Pennsylvania in our boats, moor them to the river banks and there sell them and their contents free from any and all State taxation. And this we confidently submit is still the law, as it always has been.

We have already alluded to the singularity of form in *Brown vs. Houston* and *Brown vs. Maryland*. Whilst we rely with supreme confidence on the validity of every principle enunciated in the latter case (many of which are approved and reiterated in the opinion of the former), still it is not difficult to separate them. Both opinions are characteristic Both are learned, astute, erudite. But the former has never been questioned in any one particular. *They are both original package cases*. On this similitude the Maryland tax was declared null and void: the Louisiana tax valid.

Brown vs. Maryland has attached to it quite a history. It was argued by Maryland's Attorney General, who afterward became a Federal Chief Justice. He was surprised at the opinion of the court; but freely admitted that he erred in his contention.

Since then bench and bar have universally adopted it, and all Federal courts without distinction—all of it except the so-called "Obiter" mentioned above. The very *vinculum juris* which the case fastened, the very line of demarcation between Federal jurisdiction and State jurisdiction was laid down so plainly that he who runs may read, has been ignored and treated as a non-existent, and the opinion in Brown vs. Louisiana (Houston) now reads, after a discourse of what Free Trade is among the States, and concluding with—"In short, it may be laid down as the settled doctrine of this court, at this day (May 4, 1885), that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce with foreign nations." This, it will be observed, is the very doctrine of the "Obiter" in *Brown vs. Maryland*.

The opinion then continues:

"This being the recognized law, the question then arises whether the assessment of the tax in question amounted to any interference with, or restriction upon the free introduction of the plaintiffs' coal from the State of Pennsylvania into the State of Louisiana, and the free disposal of the same in commerce in the latter State; in other words, whether the tax amounted to a regulation of, or restriction upon commerce among the States; or only to an exercise of local administration under the general taxing power, which, though it may incidentally affect the subject of commerce, is entirely within the power of the State until Congress shall see fit to interfere and make express regulations on the subject" (p. 632).

Here the argument seems to us to be doubtful. It runs very much in this way: *First:* The Constitution, when it speaks of imports and exports, does not apply to interstate commerce but only to articles imported from foreign countries; overruling the "Obiter." *Second:* That a portion of the coal sold for use to a foreign steamship in the port of New Orleans was not an export. *Third:* That the tax in question was neither a tax on exports or imports. *Fourth:* That the clause in the Federal Constitution which reads "No tax or duty shall be laid on articles exported from any State," only means Pennsylvania may not tax coal exported; but Louisiana may tax coal imported. We only mean to say the clause in question does not prohibit it. *Fifth:* "It had become a part of the general mass of property in the State, and as such it was taxed for the current year (1880), as all other property in the city of New Orleans was taxed."

"Under the law it could not be taxed until the following year."

But even if it comes within the State for a day and for sale or use, without some act of Congress, in the absence of any congressional legislation to the contrary, it is not seriously to be contended that it is not taxable by the State importing it.

But the opinion seems to refute itself. In reply to the argument for interstate free trade, the argument calling for refutation was this: "If Louisiana can successfully tax Penn-

sylvania coal coming within her limits, it then must be admitted that Pennsylvania can tax sugar, cotton, rice, etc., coming from Louisiana." State customs officers, all interested in a percentage on the tax, would patrol the banks of the river and tributaries; tide-waiters would swarm at the landings, and the Mississippi would be "vexed" from its source to the gulf.

These results would flow necessarily from the affirmance of that judgment. The court further said:

"We do not mean to say that if a tax collector should be stationed at every ferry and railroad depot in the city of New York, charged with the duty of collecting a tax on every wagon-load or car-load of produce and merchandise brought into the city, that it would not be a regulation of, and restraint upon interstate commerce, so far as the tax should be imposed on articles brought from other States. We think that it would be, and that it would be an encroachment upon the exclusive power of Congress."

There is no attempt to distinguish this case from the one in hand, except a general denial and the faith and credit due to *Woodruff vs. Parham*. *Goods bound to New Orleans and a market*, from Pennsylvania, become subject to a *city tax* the moment they reach the levee, and the decision would seem to cover *a State tax* likewise.

Sight was completely lost of the fact that the coal was not landed; that it would not be until sold; that the moment it was so sold and landed it became the property of a resident of the State—a part of his personal estate liable to taxation.

But what is the most surprising feature of the opinion in *Brown vs. Houston* is the following:

"When Congress shall see fit to make a regulation on the subject of property *transported* from one State to another" (the constitutional words are "imports and exports") "which may have the effect of a temporary exemption from taxation in the State to which it is transported, it will be time enough to consider any conflict that may arise between such regulation and the general taxing laws of the State" (p. 634).

"A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it

applies alike to the people of all the States, including the people of the States exacting such statute."

Minnesota vs. Parker, 136 U. S. 313, 319.

Robbins vs. Shelby Taxing District, 120 U. S. 489, 497.

Brimmer vs. Rehman, 138 U. S. 78, 82, 88.

In the case of *Minnesota vs. Parker*, another principle there stated is cited and affirmed, and eminently applies here.

"There may be no purpose upon the part of a Legislature to violate the provisions of that instrument (the Federal Constitution), and yet a statute enacted by it, under the form of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution;" in which case "the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void."

Pennsylvania says to Louisiana, this coal is mine, with the option to take back home, sell, or seek another market, and as long as it remains in my boats on free waters it is free from taxation, the boats can only be made to pay for facilities afforded for landing, and only subjected to the proper rules of navigation.

It is only when I unlade it that it becomes subject to State and city taxation the same as that of your citizens.

If the highest court sanctions and affirms the doctrine in *Brown vs. Houston*, it opens the door to the unlimited exercise of the right of taxation against every bushel of wheat, barrel of flour, and tierce of lard coming to Louisiana for sale, whilst on the boats, *before* being unladen and sold, as well as *after* such facts arise.

As the first article is for sale only for export to Europe, the second and third partially for use in Louisiana and partially for export to Mexico and the Central and South American States, who is to discriminate and how is the discrimination to be made, whilst the article lies unladen in a boat tied to the river bank. Is it not proper to class it as *in transit*, until unladen, and subject only to such laws as Congress may make? or as said by Mr. Chief Justice Fuller *In Re Rahrer*, 140 U. S., p. 555:

"The Constitution does not provide that interstate com-

merce shall be free, but by the grant of the exclusive power to regulate it, it was left free except as Congress might impose restraint."

The chief justice in that case commented upon *Bowman vs. R. R. Co.*, 125 U. S. 465, and *Leisy vs. Hardin*, 135 U. S. 100, stating his conclusion of the views of the court therein in the following language:

"Hence it was held that inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically, or in such way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such commerce should be free and untrammeled," etc.

And in his reasoning on the subject matter before the court in that case, he tersely yet most clearly announces the principles we contend for as opposed to the discrimination of *Brown vs. Houston*.

"By the adoption of the Constitution the ability of the several States to act upon the matter solely in accordance with their own will was extinguished, and the legislative will of the general government substituted. * * * while the object was undoubtedly sought to be attained of preventing commercial regulations partial in their character, or contrary to the common interests. * * * The power over interstate commerce is too vital to the integrity of the nation to be qualified by any refinement of reasoning. The power to regulate is solely in the general government, and it is an essential part of that regulation to prescribe the regular means for accomplishing *the introduction and incorporation of articles into and with the mass of property in the country* or State." 12 Wheaton, 448. (Italics ours.)

The distinction between the right to tax personal property on navigable waters and upon land was recognized in *Railroad Co. vs. Maryland*, 21 Wall. 456, 470, and affirmed in *Pullman Car Co. vs. Pennsylvania*, 141 U. S. 18, 23, 24. The court (Mr. Justice Gray) said:

"Commerce on land between the different States is so strikingly dissimilar, in many respects, from commerce on water, that it is often difficult to regard them in the same aspect in reference to the respective constitutional powers and duties of the State and Federal government. No doubt commerce by water was principally in the minds of those who framed and adopted the Constitution, although both its language and spirit embrace commerce by land as well. Maritime transportation requires no artificial roadway. Nature has prepared to hand that portion of the instrumentality employed. The navigable waters of the earth are recognized public highways of trade and intercourse. No franchise is needed to enable the navigator to use them. Again, the vehicles of commerce by water being instruments of intercommunication with other nations, the regulation of them is assumed by the National Legislature. So that State interference with transportation by water, and especially by sea, is at once marked and distinctly discernible.

"But it is different with transportation by land."

Mr. Justice Bradley again announced the opinion of the court in *Crutcher vs. Kentucky*, 141 U. S. 47:

"It has been frequently laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. * * * No difference is perceivable between the two. * * * As a summation of the whole matter, it was aptly said by the present chief justice, in *Lyng vs. Michigan*, 135 U. S. 161, 166: 'We have repeatedly held that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress.'"

The above quotation was again made from that case by Mr. Justice Brewer in *Brennan vs. Titusville*, 153 U. S. 289, 301, and was especially emphasized in the concluding clause of the opinion.

The last case reported on the matter of interstate commerce is that of *Covington Bridge Company vs. Kentucky*, 154 U. S. 204, 209.

Mr. Justice Brown, in delivering the opinion of the court, makes a division of the rulings on the subject matter, and says:

"The adjudications of this court with respect to the power of the States over the general subject of commerce are divided into three classes: *First*, those in which the power of the State is exclusive: *Second*, those in which the States may act in the absence of legislation by Congress: *Third*, those in which the action of Congress is exclusive and the States can not interfere at all. The *first* class * * * concerns the strictly internal commerce of the State. * * * Within the *second* class of cases, those of what may be termed concurrent jurisdiction, are embraced laws for the regulation of pilots: * * quarantine and inspection laws: * * the improvement of navigable channels: * * the improvement of wharves, etc. * * *

"But wherever such laws, instead of being of a local nature, and not affecting interstate commerce, but incidentally are national in their character, the non-action of Congress indicates its will that such commerce shall be free and untrammeled, and the case falls within the *third* class—of those laws wherein the jurisdiction of Congress is exclusive. *Brown vs. Houston*, 114 U. S. 622: *Rowman vs. Chicago Railway*, 125 U. S. 465. Subject to the exceptions above specified, as belonging to the first and second classes, the States have no right to impose restrictions, either by way of taxation, discrimination or regulation, upon commerce between the States."

Louisiana can have no better right to tax this coal, whilst the property of the Pennsylvania company on navigable waters, still laden, after it has paid the Pennsylvania tax for the same year, than that State would have were it removed inland from Pittsburg on its own navigable waters.

Brown vs. Maryland was the law and jurisprudence of Louisiana down to the decision in *Brown vs. Houston*.

State vs. Kennedy, 19 An. 397.

Here arises the question to which, as yet, no reply has been vouchsafed. What right has Louisiana to resume those powers which have been vested in the Government of the United States? 141 U. S. 33. The analogies of the law, like those of nature, are universal. The master mind in law is the

one that quickest grasps and retains the principles of law governing a case. As in astronomical enquiries, the discovery of two satellites to the planet *Mars*, when once announced, is at once credited and recorded as a fact accomplished, even though no verification of the discovery can be made for years. A false analogy is detected at once, a true one is perpetually admitted.

Let us follow out the analogy of the vendor's privilege for the unpaid price of movables.

A fleet of coal boats filled with coal come down the Mississippi consigned to a buyer, A.

Before delivery, A becomes insolvent, and the vendor, B, a citizen of Pennsylvania, attaches the property—a *stoppage in transitu*—in a Federal court.

Could the State of Louisiana intervene and claim as against A, and his assignee in bankruptcy, this so-called yearly tax? We think not, regardless whether the original contract of sale was judicially revoked, rescinded or affirmed. It would look somewhat strange to see the State officers, after the Federal marshal was in full possession, walking aboard the coal boats and assessing and collecting the tax, and, by a judicial or non-judicial sale, paying the same into the State treasury. This analogy becomes clearer where A, the purchaser, encounters a civil and not a physical death.

It is not now questioned that this power is vested exclusively in Congress to regulate, and the omission of Congress to do so, not that the States may legislate with respect thereto but that commerce shall be free from all statutory regulations until Congress sees fit to impose them. *Robbins vs. Taxing District*, 120 U. S. 489.

No State has the right to lay any impost, in any form, upon interstate commerce, whether by way of duties upon the subject of transportation or by way of license fee imposed upon the occupation or business of carrying it on. But this does not invalidate all State laws because they contain such clauses.

It is only—

"When by virtue of its police power and its jurisdic-

"tion over persons and property within its limits, a State "provides for the security of the lives, limbs, health and "comfort of persons and the protection of property; or when "it does those things which may otherwise incidentally affect "commerce, such as respects the establishment and regula- "tion of highways, canals, railroads, wharves, ferries and "other commercial facilities," etc.

"But in making such internal regulations a State can not "impose taxes upon persons passing through the State or "coming into it merely for a temporary purpose, especially if "connected with interstate or foreign commerce; nor can it "impose such taxes upon property imported into the State "from abroad, or from another State, and not yet become part "of the common mass of property therein; and no discrimina- "tion can be made, by any such regulations, adversely to the "persons or property of other States; and no regulations can "be made directly affecting interstate commerce. Any taxa- "tion or regulation of the latter character would be an un- "authorized interference with the power given to Congress "over the subject."

Robbins case, 120 U. S. 493–494.

The case of *Alang vs. California*, 24 Howard 169, was decided by a unanimous court; it construed *Brown vs. Maryland;* it construed the Constitution. "No State shall * * levy any imposts or duties on imports or exports;" it decided that a duty on merchandise shipped from California to New York *was unconstitutional*.

Mr. *Story* in his *Commentary* on the *Constitution* refers to the proceedings, with citations and references, under which the view we contend for was adopted in the formation of that fundamental law. *Sections* 1016, 1013, 1061, 1067.

Fifth Edition by M. M. Bigelow, 1891.

We may summarize the authorities as follows:

A. State legislation *condemned*, when—

First. When with discriminations adversely to other States.

100 U. S. 434; 116 U. S. 446; 128 U. S. 129; 129 U. S. 141.

Second. When the impost was on the subject of importations.

15 Wall. 232; 95 U. S. 465; 97 U. S. 566; 114 U. S. 622; 135 U. S. 161.

Third. A tax on the business engaged in interstate commerce because imposed on its *agencies.*

136 U. S. 104; 136 U. S. 114; 141 U. S. 47.

Or *on its earnings.*

121 U. S. 230; 122 U. S. 326.

Or its methods.

112 U. S. 69; 117 U. S. 34.

Or directly on its business.

96 U. S. 1; 105 U. S. 460; 118 U. S. 557; 122 U. S. 347; 127 U. S. 411; 127 U. S. 640.

B. *Approved* when commerce incidentally affected—

In the licensing of *ferries.*

107 U. S. 365.

In *wharfage.*

95 U. S. 80; 100 U. S. 428; 105 U. S. 563; 107 U. S. 698; 121 U. S. 444; 148 U. S. 333.

Taxation of property, including capital stock.

116 U. S. 517; 125 U. S. 530; 141 U. S. 18; 148 U. S. 102.

Taxing franchises or corporate privileges derived from the State.

18 Wall. 206; 142 U. S. 217; 143 U. S. 305.

SECOND.

"The original package" doctrine, as the mere extension of the vendor's equitable lien; the vendor's privilege for the price unpaid on movables, evolved so equitably in all the proceedings in "*stoppage in transitu*" in modern times, was very happily applied in the case of *Brown vs. Maryland*, 12 Wheaton, 419, and formed the authoritative basis of several subsequent decisions. There is great weight to be attached to the *obiter dictum* therein. "We suppose the principles laid down in this case to apply equally to importations from a sister State" (12 Wheaton, 449).

It is remarkable, the frequency with which this particular passage has been quoted in cases involving interstate commerce. One would suppose that *Brown vs. Maryland* was the

law of this court still, but the case is in entire discord with *Woodruff vs. Parham* and *Brown vs. Houston*. There must be something wrong in the decision of a case when it is quoted several times on both sides of several others, which has been the inevitable fate of both these cases. One or the other should be overruled. As they stand they can not coexist. Besides, when this court uses the ordinary commercial terms of the Federal Constitution, such as *exports* and *imports*, and confines them to *extra* territorial relations, when they were mainly intended for *intra* territorial relations, contrary to the intent of the Constitution, and uniform congressional legislation, they lose sight of the universal in the particular, and absolutely destroy the singular. *Woodruff vs. Parham* is a singular example.

The present legislation of Louisiana is a mixture of Spanish, French and American law; its codes are mainly founded on the Code of Napoleon. The privilege of the vendor follows in the code directly upon that of the landlord, but both are coeval with the institution of property. Now, the vendor of movables in Louisiana has three separate and independent remedies for his payment of the price; and the one here relevant is contained in Art. 3230 L. C.

"When the things reclaimed (by vendor) consist in merchandise, which is sold in bales, packages or cases, the claim shall not be admitted if they have been untied, unpacked or taken out of the cases and mixed with other things of the same nature belonging to the purchaser, so that their identity can no longer be established."

This primordial principle of law, as old as the "*suum cuique*," would be intolerable to a Pennsylvania legist, who might with judicial authority safely call it a fraud, and *contra legem*, is one of the very happiest instances in the opinions of the great chief justice of his wonderful and superlative excellence as a jurist. How draw the line between positive and negative universals such as poverty and wealth, sickness and health, pain and pleasure, or as in this case, Federal power and State power. There is no mention of a line in *Brown vs. Houston*, and not even an allusion

to one; but the broad assertion of a principle the learned, astute and erudite judge, clothed in his own language, gave to the world in the dissenting opinion in *Pullman Car Co.* case, *141 U. S. 31:* "*When personal property is permanently located within a State for the purpose of ordinary use or sale, then indeed it is subject to the laws of the State and to the burdens of taxation * * * It has then acquired a situs in the State where it is found.*"

The vital flame of the dissent is hostility to the doctrine of *Brown vs. Houston*; but in the extract just given, in the employment of the two words "permanent" and "sale," the decision in *Brown vs. Houston* is left without a basis.

Fundamento sublata cadit opus.

Citizens of other States can not be suspected of bringing coal into Louisiana to keep or to use, under existing social systems. They invariably desire to rid themselves of it as quickly as possible. It will be observed that in the *Pullman Car Company vs. Pennsylvania*, the distinction is made between sale and use of a thing taxed, and *Brown vs. Houston*, 114 U. S., is quoted in support of the State's right to tax the cars, and if both these cases are antagonistic to each other, it is clear they must both be erroneous; one can not be right and the other wrong. This is the position we hold in this argument.

Both cases may be considered as on a rehearing, though in some respects they differ essentially.

Brown vs. Maryland announces one of the great truths of the Science of Political Economy (12 Wheat. 440), "*a duty on imports is a tax on the article, which is paid by the consumer.*"

Who then pays the tax to the State of Louisiana on the coal here involved? Who pays the tax to Pennsylvania on the Pullman cars, or in any other conceivable case of taxation now prevailing? The answer is ever the same, the consumers. These consumers are almost universally Louisianians.

The plaintiffs in error have long since sold all the coal involved in this suit, and included the tax in the price of the

coal. The Louisianians have paid the tax and long since burned the coal. "Then, in fact," the State says to us, "what interest have you in the suit?" The reply must now be "pecuniarily not a cent." "But if you gain this suit, will not your profit be increased by the exact amount of the tax?"

"It may be so, but there is a question which you must solve first: had we the exercise of our rights as citizens of the United States to come to Louisiana with our coal freely by your own law, and likewise to sell it here by another and higher law? And we contend, until we sell it, you have no right to lay the hands of your tax gatherers upon it, either with or without any real consideration. And this higher law says expressly *that commerce among the States must be free*; and your State tax law and Constitution of 1879 on which it is based state that you should pay the tax. This was the law of your State before 1879 and the decision of your highest court. By no actual sale and purchase of coal can you get a barrel or ton as long as your legislators intend to tax it, without your paying the tax in the price. You need not blame your legislators for this; the fault lies somewhere else."

The interlocution is somewhat different between the Louisianian and Pennsylvanian in the Pullman Car Company's case.

It begins with, "Who pays the tax on a sleeping car running through Pennsylvania?" It must be as we have seen, the consumer, the citizen of the United States who needs and uses the car.

It is inextricably merged in the price of passage. In view of this case it would require the aid of very learned counsel to enter suit in this Honorable Court either on behalf of Louisiana or Pennsylvania, or *vice versa*. Both States are striving to exaggerate their *constabulary* power by invading the sphere of Federal jurisdiction—intercourse among the States.

We dissent from this justification of a direct tax upon a sleeper through a sleeper upon the same grounds on which

the dissent rested in 118 U. S. 467—unfortunately not reported. It may be admitted that the powers of the State in some cases to tax are wider than those of the United States, but when these State powers of taxation happen to come within the Federal sphere pertaining to intercourse and commerce among the States, they must of necessity yield.

Where the spheres of taxation are entirely independent of each other, and where the dominant authority has declared that within one of the spheres of this Federal domain there must be no taxation whatever by the several States, then Pennsylvania is quite destitute of the power of taxing the individual citizens of her own State, as well as those of all other States, for the privilege of going through or out of her limits into another State. This exemption inheres in all the citizens of all the States and Territories. It can not be the law that any State of this Union, even for the laudable purpose of paying her honest debts, can compel the non-resident Federal citizens to contribute, by any tax on commerce or intercourse, including of course their indispensable instrumentalities.

It may be said that, according to indisputable principles of political economy, consumers pay all the taxes of every nature imposed by governments. Consequently the people of Louisiana pay all the taxes levied on this coal. If the rights of these parties are to be determined, either at the time of the commencement of the suit or at any time subsequently, they form two questions of great interest and importance.

If we regard the case from the *first* point of view, it is quite clear that the appellants would not embrace the State tax in their sales of the coal; and to this extent citizens of Pennsylvania would not only pay taxes to their State, as they have already done, but would also pay the same tax to Louisiana. This would be a *reductio ad absurdum* by giving the right to tax the coal to every other State into which it might chance to come.

In the second place, if the coal has come into the State for sale and been there consumed or otherwise disposed of in due course of business, the citizens of Louisiana have already liquidated and paid the tax. It has gone into the treasury of

the State; it has been distributed and disbursed by the State in conformity with its constitutional provisions. Some of these provisions, it may well be doubted, are questionably discordant with the fifteenth amendment of the Federal Constitution. In such a case the appellants, if they knew the State law, must be presumed to have included the State tax here claimed in the price for which they sold their coal. They would thus be without the slightest interest in this suit, and there would then be presented to your Honors for solution something resembling an academic question, apparently better fitted for a moot court.

But the question is much more serious, for then no recovery could be had in this proceeding. For it seems very clear that if the people of the State have already received one payment of the one annual tax, they can not again sue for it; for, to do so, would be losing sight of that radical distinction of the characters of actions forming the indestructible basis of all human jurisprudence. In its essence then, if this be an action for the recovery of the tax on the ground of its non-payment, when it had been already paid, it would be utterly untenable. The action would be then a suit to annul the payment and recover back the money. The first would be an action direct to recover the money, and the second an action, indirect, to recover it over again.

But this is out of the question. The State, as suitor, in its own courts, represents all its people in its three departments—legislative, executive and judicial. If this peopl pays this one tax it can never call upon them, and *a fortiori*, on all the other people, to pay this one tax a second time. Things may be taxed several times by the same authority, but it was never heard of, a double or triple payment of the same tax.

If suit be to recover a tax when it has been already paid, on the ground of public policy or on anything else whatever, so vague and uncertain, it may be urged that even if the attempt here was made to recover back the tax on this coal paid in error by the people, there would still be the insurmountable objection that what had been thus paid was so paid in pursuance

of a natural obligation, and under such circumstances no recovery can be had.

See Code Napoleon, Arts. 1376, 1377; Louisiana Code, Arts. 2303, 2304.

This question is not a new one in Louisiana. Her Supreme Court, shortly after the war, decided in a unanimous opinion that such a State tax on coal as this was inconsistent with the Federal Constitution and a direct invasion of the Federal sphere of taxation and in conflict with the case of *Brown vs. Maryland*, 12 *Wheaton*, 419.

See *State vs. Kennedy*, 19 La. An. 397.

In December, 1844, the Supreme Court of Louisiana had before it a case involving the effects of an unconstitutional municipal tax which excited an unusual popular interest and attracted universal attention. The amount involved was very large and the case was argued with the most consummate ability by four of the prominent members of the bar of Louisiana. This case has a direct bearing on this part of our subject.

See *Worsley vs. Municipality* No. 2, 9 Rob. 324.

Several other views present themselves.

The relations of the several States to the general government as to the levee system of the States bordering on the great rivers, in regard to which there is an appropriate allusion in the Louisiana Constitution of 1879, and the large appropriations made by Congress for the improvement of the navigation of the Mississippi, including the millions paid for the jetties, and their maintenance at the mouth of the Mississippi.

Then the amazing growth of interstatal commerce as shown by the census of 1890.

The enormous growth of immense manufactories and commercial houses and banking corporations, all having their *foci* in the Federal courts, connected together in every direction financially, the whole system of taxation is directly allied therewith. The harmonies between the action of the States and the Federal Union are being detected and improved, whilst the discords rapidly disappear. It is time that State

taxation as against the acknowledged superior sphere of Federal taxation should be stayed.

Even Justice Thompson, in his dissenting opinion in *Brown vs. Maryland, 12 Wheat. 454*, conceded the State was without the power contended for in this case. His words are: "The prohibition to States is against laying any impost or duty on imports. It is the merchandise that is exempted from the imposition."

Therefore, when we see, as in this case, this coal in transit, not yet having reached its consignee for sale by him, having a tax levied upon it as merchandise or stock in trade in a parish or county where it is temporarily at rest, and before reaching its destination or becoming otherwise mixed with the general property of the State, we may well say of the law, "That which is not supreme must yield to that which is supreme." *12 Wheat. 118.*

But not only is the statute of Louisiana unconstitutional as an attempt to convert the free trade and navigation out of the Mississippi river and its tributaries, as provided by acts of Congress and other means, but the State taxation is on property not only not within the State technically, but is not embraced in the statute of the State relied on. It is indeed hardly possible, or plausible, even, that the Legislature of that State intended to tax its own people for this coal. It was an entire novelty to tax Pittsburg coal that had been coming down the river free ever since the act of Congress. This suit was the first time the plaintiff had been called upon to respond to such a claim, which was, apparently, suggested by the decision in *Brown vs. Houston.*

The judges who decided this case below little thought that they were helping to pay this tax on coal, or that the free trade on the river Mississippi was of the very end and aim of the power of Congress to regulate commerce. As to helping to pay this tax they candidly admit this proposition, for they are all large consumers of coal, and not even lignite can be found within the boundaries of the State. As to free navigation of the river, they ignore Article 455 of their Code: "The use of the banks of navigable rivers or streams is

public," and, in order to force this doctrine into the minds of the judges, out of abundant caution, the Legislature added a studied interpretation of it: "Accordingly, every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessel, to dry his nets and the like." And, of course, to sell their contents without any tax, toll, impost, etc. Why? Because the people wanted to buy and consume what he was bringing to them, and knew, from their own long experiences as men, that if they put a tax on them they would have to pay these very taxes themselves, in the price they paid for the goods. They also knew that when their lands were bought by the Federal Union the great river became at once free from the former taxation of commerce upon it by Spain and France, and the free trade established upon it had existed ever since that purchase, and was recognized by all departments of their State government, down to *Brown vs. Houston*, and their Constitution of 1879.

But nothing is clearer than that the grant to the public of the free use of the river bank, without any burden whatever, for the purposes of plaintiffs in error, forbids any such construction of the State's taxation as placed upon them in *Brown vs. Houston*. Louisiana invited the whole world to come and use the shores of her rivers, free of all charge, but now, when they come within her borders, under an annual tax law, they begin to seize and sell the property under what is called due process of law on the most unjust and unreasonable pretence, for, the very moment that the property gets within the geographical limits of the State it is liable to this so-called police power; a power reserved to the Federal Union by the Constitution. In other words, the moment coal comes within the limits of Louisiana, it comes within the protection of the State and must pay for it. What is this protection? In the present case, the demand is for $2000 and interest, but where is the protection? Where the consideration? What is given by the State for this $2000? Because, if there is no consideration, the tax is mere robbery. The taxation itself merely tyranny. Coal in boats is not an object of robbery

when moored to the bank of the river. The police powers could not and do not protect coal thus situated, from combustion and submersion. The police of the river belongs to the police power of the Federal Government exclusively, and is embraced in its admiralty and maritime jurisdiction, with which Louisiana has no right to interfere. Besides in cases of fire and flood, claims for services rendered are not actionable. The closer the case is investigated, the more it appears that coal was not intended to be embraced within this Louisiana statute; this intent can only be reached by the violation of one of the most elementary principles of eternal and unchangeable justice, the *honeste vivere*.

Finally, we may add that the affirmation by this court of the special conclusions on the facts as found in *Brown vs. Houston*, 114 U. S. 622, will enable the States respectively to go upon each steamer arriving at wharves on their navigable waters, and there and then assess and levy a tax upon every article on board from another State in the name of the importer, collect same, and then assess and levy the same tax on the same article when unladen and mixed with the general mass of property in the State, in the name of the consignee or vendee, and collect, likewise, both for the same purpose, viz.: the general good of the State.

Respectfully submitted,

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For Plaintiffs, Appellants.

156-577

Office Supreme Court, U. S.
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SUPREME COURT of the UNITED STATES,

OCTOBER TERM, 1894.

No. 3.

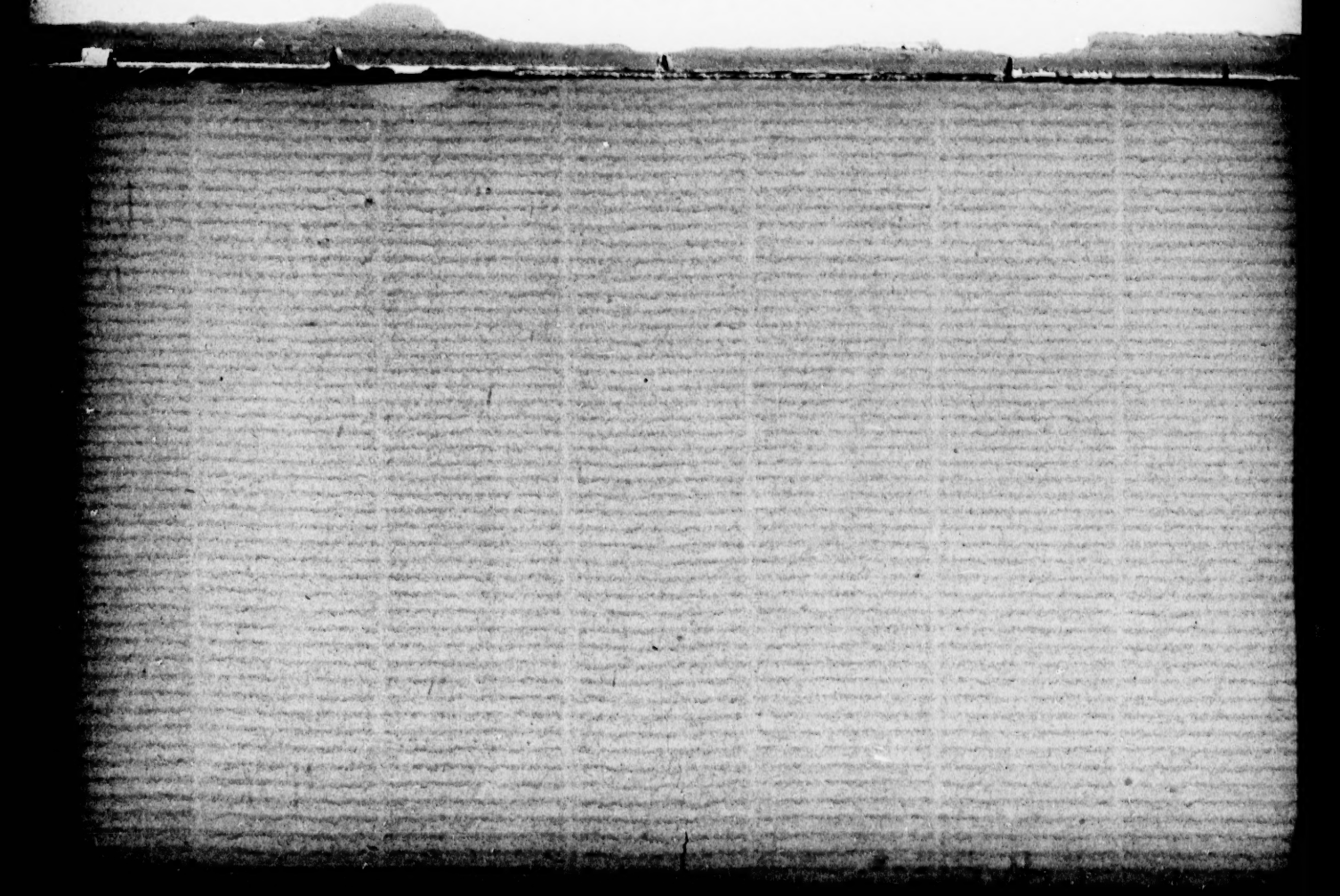
THE PITTSBURG AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

versus

J. W. BATES, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF EAST BATON ROUGE, LOUISIANA.

Brief of the Defendant in Error.

M. J. CUNNINGHAM,
Attorney General of Louisiana.



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Brief of the Defendant in Error.

M. J. CUNNINGHAM,
Attorney General of Louisiana.

SYLLABUS.

1. The tax resisted is levied under the provisions of the Act No. 98 of the Legislature of 1886. The coal on which the tax is imposed was brought from the State of Pennsylvania. The tax is a uniform one of six mills on the assessed value of all property within the State, whether owned by the citizens of this or of other States, or aliens, regardless of the place where the property was produced.
2. "Coal brought from Pennsylvania to New Orleans for sale, can legally be taxed by the State of Louisiana, and the tax thus levied upon it is not obnoxious to any of the three constitutional principles invoked in this case, viz:

1st. That the citizens of each State shall be entitled to all the immunities and privileges of citizens of the several States.

2nd. That Congress shall have power to regulate commerce with foreign powers and among the several States.

3rd. That no State shall levy any imposts or duties on imports or exports." 33 An. 843; 114 U. S. 622.

3. The constitutional guarantee that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States simply prohibits any injurious discrimination against the products of other States, or the rights of their citizens." 8th Wallace, 140 and 152. The tax imposed bears alike upon all the property within this State, no matter who may be the owner or where it is produced, and does not discriminate against the products of other States, or the property of citizens of other States.

4. Property not in transit, but on consignment for sale in Louisiana, and mingled with the mass of property of the State, is taxable as all other property.

5. The terms exports and imports in the constitutional provision invoked, have reference to goods brought from and carried to foreign countries alone, and not to goods carried from one State to another. 33 An. 843; 114 U. S. 622.

6. The taxation in question does not in any way infringe upon the constitutional provision relating to the regulation of commerce. "A tax on property that may be the subject of commerce under congressional regulations, is not a tax on commerce. Neither is a tax on property which has been the subject of such commerce, where it is taxed only as proprty, and in common with all other property within the State." 33 An. 845.

BRIEF.

In the discharge of his official duty the sheriff of the Parish of East Baton Rouge, State of Louisiana, under Act 98 of 1886, the revenue act, seeks to recover for the State from plaintiff in injunction, now plaintiff in error, the sum of $1200.00, being amount of State tax due on their property in the Parish of East Baton Rouge for the year 1887. The officer has been enjoined from collecting this tax.

Section 1 of said Act 98 provides, "that for the calendar year 1886, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar on the assessed valuation of all property situated within the State of Louisisiana, except such as is expressly exempted from taxation by the constitution." This act specially provides that all goods on consignment for sale, without reference to where they belong must be taxed.

The said Act 98 contains the following clause, "goods in transit for forwarding, not on consignment for sale, are not to be assessed." We see then that the revenue act of the State expressly guards against any infringement of the law regulating commerce, and it is not obnoxious to any constitutional provisions invoked by appellant. Under the legislation above recited appellant is certainly liable for the tax claimed, unless it shall appear that the law imposing the tax is violative of the Constitution of the United States or that of this State.

It is urged that the act in question is in conflict with: 1st. The third clause of section 8, of Article 1, of the Constitution of the United States, which provides that "the Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes;" 2d. With Article 1, Section 10, Clause 2, of said instrument, "that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;" 3d. With Article 4, Section 2, Clause 1, of said Constitution, "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

"The clause in the Federal Constitution giving to Congress the power to regulate commerce with foreign nations, and among the several States had no immediate relation to, or necessary connection with the taxing power of a State. Every tax upon property, it is true, may affect more or less the operations of commerce, by diminishing the profits to be derived from the subject of commerce, but it does not for that reason amount to a regulation of commerce within the meaning of the Federal Constitution, and such is the doctrine laid down by the Supreme Court of the United States." 33 An. 845, affirmed in 114 U. S. 622. The revenue act of 1886, under which this tax is imposed, is identical with the Act No. 77 of 1880 on which that decision was rendered.

The tax levied on this property cannot be defective, on the ground that it is violative of Article 1,

Section 10, Clause 2, of the Constitution, prohibiting the States from laying imposts or duties on imports or exports, because the word "imports" as used in the Constitution, has been repeatedly construed to apply not to property brought or imported from other States of the Union, but *solely* to imports from foreign countries. Woodruff vs. Parham, 8th Wall. 123; 33 A. 843; 114 U. S. 622. In this last case the Supreme Court of the United States say, "this Court after an elaborate examination of the question, held that the terms "imports" and "exports" in the clause under consideration had reference to goods brought from or carried to foreign countries *alone*, and not to goods transported from one State to another."

The property in question is not temporarily within the State and Parish. The coal is taxed in common with all other property found within the State, and not to tax it, simply because the owners live in another State, would be a very unjust discrimination against the citizens of this State. This property has been treated in every respect, the same as property produced here and owned by the citizens of this State. The assessment is in the same form and the same rate of taxation is imposed. It is admitted by appellant that the assessment is in due form, and that the property has been legally assessed at $200 000 00.

For the facts of the case we rely solely upon the evidence furnished by plaintiff. The Pittsburg and Southern Coal Company, having its domicile in the State of Pennsylvania was organized in the year

1866. The company is represented in Louisiana by an agent, Mr. Schneidau, residing in the city of New Orleans.

Mr. Schneidau, on cross-examination, says substantially: "have been agent for the company since Dec. 1886, during the whole of that time, the company kept a fleet of coal boats up the river in this Parish, on an average of fifty boats, during this year, averaging one hundred or more boats and barges. A barge or boat of coal averages about $2,500 or $3,000. The coal is sold at different points along the river *below here* and some in New Orleans, *all is sold within the State of Louisiana, that is the* coal kept on *deposit in this Parish.* We sell upon the waters of the Mississippi river only.

"*We sell the coal we keep to anybody from our depot* in East Baton Rouge in vessels at the landing. The company has kept coal there since its organization, it being considered a safe landing for the distribution of coal to points below. We have about 140 boats and barges now, and the same *is all* for sale.

"We sell coal to sugar planters below *from this landing*, parties who buy move the coal from the landing, *the company having nothing to do with the transportation of it.*"

We also find that the company does keep an agent in the Parish of Baton Rouge, who although styled by counsel and by witnesses as "heap pumper and foreman" is entrusted with considerable responsibility, to-wit: the custodianship and care of over $200,000 worth of personal property, and it is this

agent or foreman who delivers all the coal sold from this depository. It will be seen by a review of his testimony that Mr. Schneidau repeatedly states the company has nothing to do with the further transportation of the coal, after it is once landed at their depot in East Baton Rouge.

With all of these facts so fully and candidly attested by themselves, it is difficult to understand how counsel can seriously oppose the payment of this tax.

First. Because there is no attempt to regulate commerce in any way, no obstacle of any kind is offered to their full, free and untrammelled commercial intercourse with the people of this State, or with the people of any other State; the property is simply subjected to the uniform tax of six mills on the assessed value thereof, *as a property tax*, just as all other property in the State. With equally as much force, it might be contended that a Western Syndicate or company could establish in the Mississippi river at New Orleans, a vast floating warehouse comprised, as is this fleet, of barges or flatboats towed down the river, filled with all the products of the great West, such as grain, hay, flour and meats, and that they could sell and keep on deposit for sale, to any and all buyers, continually the year round and from year to year, this great stock in trade, without being liable for the legal property tax on its properly assessed value the same as is required of all other property within the State. For the purpose of this argument it would matter not whether this property was sold by the boat load or by the barrel, sack or cask.

Second. Because all the highest authorities in the land have uniformly declared that the terms "imports and exports" as used in the Constitution of the United States, have reference to goods brought from or carried to foreign countries alone, and not to goods transported from Pennsylvania and offered for sale in Louisiana, and it is not claimed or contended, even in argument, that any of these goods are exported to foreign ports either by this company or by any one else. It is true, counsel state in argument that it is within their personal knowledge that some of the coal is shipped beyond this State, not to a foreign port, however, but to the State of Texas, so that even if this fact had been put in evidence, it would not sustain the position taken in this objection.

Third. Because the section referred to of the Revenue Act of 1886, makes no manner of discrimination in taxation between the products of this State and the products of other States, nor does it discriminate between the citizens of this State and the citizens of any other State. If this coal from Pennsylvania was simply passing through the State "en route" to Texas, and was temporarily stopped by necessity or for convenience, the case would be different; this is not the situation presented in this case. In appellant's petition for this injunction is found this allegation: "Petitioner represents that during the current year it has sent down the Mississippi river a large number of its vessels, the property of petitioner, *to supply the trade of Louisiana* along the Mississippi and its navigable tributaries, which said vessels and

its cargoes of coal *are consigned* to P. A. Schneidau, the agent of petitioners at New Orleans, La."

This is a solemn judicial admission that this very coal is on consignment for sale in Louisiana, and that the State of Louisiana is its final destination so far as this coal company is concerned. Besides, the agent testifies that this particular coal at the company's depot, in East Baton Rouge, is all for sale, and that none of it is sold outside of this State.

Again, taking counsel's statement in argument as part of the record, that some of the coal is shipped to Texas, by being put in lighters, and towed to that State for the use of the Sante Fe Railroad, it follows that the coal is sold in Louisiana to the Sante Fe Railroad, and afterwards transported by the railroad company to Texas, for Mr. Schneidau swore that the coal kept at East Baton Rouge depot, the coal which forms the subject of this suit, is all sold within the State of Louisiana. The facts of the whole case resolve themselves to this: That the appellant company, a coal dealer, owns and keeps *on consignment for sale* a large quantity of coal in this Parish and State; that said coal is commingled with the mass of the property in the State, and is entitled to all the protection and benefits guaranteed by the laws of this State to all other property, within the State, and, like all other property, is liable to the equal and uniform taxation for the support of the State. This coal is assessed properly in the Parish where it is found, and it is admitted that it is not assessed elsewhere in this State.

To argue this case, seems a work of supererogation, for it is like an attempt to re-open a matter which has become *res adjudicata*. The law and the facts presented in this case are almost identical with those of the case of Brown vs. Houston, decided by the Supreme Court of Louisiana in 33 A. 843, and sustained by the Supreme Court of the United States in 114 U. S., 622.

In Brown vs. Maryland, 12 Wheat. 419, the Supreme Court of the United States held a State license upon importers to be a duty or impost upon imports, within the prohibition of the Constitution. These were imports from foreign countries. But even as to them the Court held "that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package, in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution * * * This state of things is changed if he sells them *or otherwise* mixes them with the general property of the State, by breaking up his packages, and travelling with them as an itinerant peddler. In the first case, the tax intercepts the import, as an import in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed

to the revenue of the State. * * * In the last cases, the tax finds the article already incorporated with the mass of property by the act of the importer." But this was a tax which affected imported goods which had paid a tariff tax; and it was a license, an occupation tax, a tax upon the business—and there is no intimation that a tax upon property is illegal, because it is the subject of either foreign or inter-state commerce.

However, the dissenting opinion of Justice Thompson in that case shows by the soundest reasoning that the law imposed no duty or impost upon imports, but only a license upon wholesale dealers, whether importers or not; and he demonstrated that it was just as valid as a license upon retailers, which the majority recognized to be valid. Neither interferred with inter-state commerce, or was a duty upon imports.

In Low vs. Austin, 13 Wallace 29, the Supreme Court held a tax upon imported wines in the original packages and in the hands of the importer, to be a tax upon imports and violation of the Constitutional prohibition. The reasoning of the Supreme Court of California quoted in the statement of the case, seems to be the more sound, and to show that such a construction of the constitution would work a discrimination in favor of foreign against domestic goods in the stock of the same merchant. But this was a case of imported goods which had paid the tariff tax which was held to cover the privilege of selling in the original packages, and does not apply to the case

at bar where the coal in question was brought from another State and had paid no duty.

In Bowman vs. Chicago & C. Railway Co., 125 U. S. 465, this Court held that the law of Iowa in question was a violation of inter-state commerce, which it undoubtedly was, barring the question of police power involved, because it prohibited the importation of liquors; and, therefore, that decision does not bear upon this case in any way. But it is clear that the dissenting opinion in that case was correct, because the State had the power to prohibit the sale of intoxicating liquors, and, consequently, the power to prohibit their introduction. Intoxicating liquors are articles of commerce by sufferance, entirely unlike articles of universal usefulness which never harmless in themselves, and are always subject to the police powers of the State. The character of Leisy vs. Hardin, and Lyng vs. Michigan, 135 U. S. 100, and 161, is substantially the same. The decisions in these cases were reversed by the people, who demanded the passage of the Act of Congress of August 8th, 1890. 1 Supp. Rev. Stat, U. S., 2d ed., p. 779.

In Leloup vs. Port of Mobile, 127 U. S. 640, this Could held void an ordinance imposing a license upon persons engaged in telegraph business, because it was an occupation tax upon the business of inter-state commerce. Whether this decision was correct or not under the circumstances of that particular case, it cannot benefit plaintiff in error in this case, because it distinctly recognized the right and power of a State

to tax property used in inter-state commerce in common with other property located in the State.

The foregoing cases relied upon by Appellant, do not upon a fair analysis sustain its pretensions.

In Woodruff vs. Parham, 8 Wall. 123, a State statute, imposing a uniform tax on all sales by auction within it, was held constitutional, as applied to sales of goods the product of other States and sold in the original and unbroken packages.

In Hinson vs. Lott, 8 Wall. 148, decided at the same time, it was adjudged that a State statute which prohibited any dealers, introducing any intoxicating liquors into the State, from offering them for sale without first paying a tax of fifty cents a gallon, and imposed a like tax on liquors manufactured within the State, was valid as applied to liquors brought from another State, and held and offered for sale in the same barrels in which they were brought in; because, in the words of Mr. Justice Miller, who delivered the opinion of the Court in both cases, it was not "an attempt to regulate commerce, but an appropriate and legitimate exercise of the taxing power of the State." 8 Wall. 153.

In Welton vs. Missouri, 91 U. S. 275, the point decided was that a State statute, requiring the payment of a license tax from persons selling, by going from place to place within the State for the purpose, goods not the growth or manufacture of the State, and not from persons so selling goods which were the growth or manufacture of the State, was unconstitutional and void by reason of the discrimination; and

in Machine Co. vs. Gage, 100 U. S. 676, a State statute imposing a like tax, without discriminating as to the place of growth or produce of material or manufacture, was adjudged to be constitutional and valid, as applied to machines made in and brought from another State.

In Brown vs. Houston, 114 U. S. 622, it was decided that coal, mined in Pennsylvania and brought in boats by river from Pittsburg to New Orleans, to be there sold by the boat-load on account of the Pennsylvania owner, and remaining afloat in its original condition and original packages, was subject, in common with all other property in the city, to taxation under the general tax laws of Louisiana; and the court referred to Woodruff vs. Parham, above cited, as upholding the validity of a "tax laid on auction sales of all property indiscriminately," and "which had no relation to the movement of goods from one State to another," 114 U. S. 634.

In Walling vs. Michigan, 116 U. S. 446, the statute of Michigan, which was held to be an unconstitutional restraint of interstate commerce, imposed a different tax upon persons engaged within the State in the business of selling or soliciting the sale of intoxicating liquors to be sent into the State, from that imposed upon persons selling or soliciting the sale of such liquors manufactured within the State; and the court declared that the statute would be perfectly justified as "an exercise by the legislature of Michigan of the police power of the State for the discouragement of the use of intoxicating liquors, and the

preservation of the health and morals of the people," "if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the national legislature," 116 U. S. 460.

In Wabash, St. Louis & Pacific Railway vs. Illinois, 118 U. S. 557, the only point decided was that a State had no power to regulate the rates of freight of any part of continuous transportation upon railroads partly within the State and partly in other States. In Robbins vs. Shelby Taxing District, 120 U. S. 489, a State law requiring the payment of a license tax by drummers and persons not having a regularly licensed house of business within the taxing district, offering for sale or selling any goods by sample, was decided to be unconstitutional as applied to persons offering to sell goods on behalf of merchants residing in other States, because, as the majority of the court held, its effect was "to tax the sale of such goods, or the offer to sell them, before they are brought into the State." 120 U. S. 497.

On the trial of this case, plaintiff's counsel made transparently weak efforts to show that the coal was in transit. If it had been, it would not have been assessed; the State law expressly excepts goods in transit from the operation of the revenue bill, and every lawyer knows the State cannot lawfully tax goods in transit. But the testimony of plaintiff's agent shows beyond question that the coal had reached its destination; that it was on sale; that plaintiff, through its agent and employees, had be-

come a coal dealer; that its stock was and remained at a fixed place from year to year; that it carried the coal no further, either before or after sale; that it sold to anybody who wished to buy; that buyers could carry the coal where they pleased, but most of it was used in Louisiana.

The distinguished counsel who wrote appellant's brief has entirely overlooked or ignored this undisputed evidence of his own client, and talks about the coal being on its way to New Orleans, and being tied up for the night; while it is not to be carried any further, and is tied up until a buyer comes along.

Plaintiff is not entitled to exemption from taxation, because of non-residence, or because of the character of the goods it sells. If it does not owe this tax, then no wholesale dealer should pay taxes upon their merchandise or stock in trade purchased by them in another country or State; but they all do. By being put in stock and offered for sale in the ordinary course of business, their goods, whether coal, coffee, meat or silk, are so acted upon by them as to be commingled with the mass of the property of the State as to be operated upon by its laws impartially and without discrimination. The fact that the coal remains in barges does not affect the question, as this is the only way a wholesale business could be carried on in such a heavy article not injured by the weather; otherwise the inconvenience and expense of handling would unnecessarily and unreasonably increase the price or destroy the profits.

But the question was thoroughly considered and finally decided in Brown vs. Houston; that decision is not affected by the "Original Package" cases; and there is no occasion to over-rule it now. Lyng vs. Michigan held that a law prohibiting the sale of an article of commerce brought from another State, was an attempt to regulate commerce between the States; but no sale is prohibited, or regulated, or controlled here. No court in a well considered opinion has ever held that any property was exempt from the regular property tax levied by the State, where it was at the time of listing and assessing, upon all property within its borders alike, by reason of such property having been imported or brought from another State. All the taxes held void were occupation or specific taxes imposed as a condition of sale, with the intent to restrain or suppress the business. And this Court has repeatedly held that property used in interstate commerce was liable for the ordinary and regular State tax, and that the collection thereof was not an interference with nor regulation of such commerce. If the very instruments of interstate commerce must pay the regular tax, surely its mere subjects should.

I respectfully urge that the judgment and decree of the State courts herein are correct and should be affirmed.

Respectfully submitted,

M. J. CUNNINGHAM,

Attorney General of Louisiana.

156-577

Office Supreme Court, U. S.
JAN 11 1895
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 3.

THE PITTSBURGH AND SOUTHERN COAL COMPANY, PLAINTIFF IN ERROR,

vs.

J. W. BATES, SHERIFF AND EX OFFICIO TAX-COLLECTOR OF THE PARISH OF EAST BATON ROUGE, LOUISIANA.

Supplemental Brief of the Defendant in Error.

The plaintiff in error, notwithstanding its own evidence in the record, contends that its fleet of coal was *in transitu* when taxed, while we maintain that it had reached its destination, as clearly appears from the evidence in this record.

We now wish to call the attention of the Court to an additional fact established by the evidence of plaintiff in error in its suit against the State of Louisiana for the use of the Charity hospital, case No. 13744, October term, No. 10, pages 7, 8, 9, 10, 14, 16, 18, to wit, that plaintiff in error is not engaged in interstate commerce at all, but is simply a

wholesale coal dealer, having taken out a regular State license to carry on that business.

The parties to these two suits are the same, the Pittsburgh and Southern Coal Company on one side and the State of Louisiana on the other; both records are on file in this Court, and the cases have been consolidated for hearing. This evidence shows that this coal is mined or bought in Pennsylvania by different business firms domiciled in that State and shipped, at their risk, to the several depots in the various States on the Mississippi river below; that it does not belong to and is not at the risk of plaintiff in error until it reaches the particular depot to which it may have been shipped. Plaintiff in error is a corporation, a juridical person separate and distinct from any of the persons or firms who ship the coal from Pennsylvania.

We therefore submit that for this reason, in addition to those urged in our original brief, that the judgment of the State court should be affirmed.

Respectfully submitted.

W. J. CUNNINGHAM,
Attorney General of Louisiana.